United States Court of Appeals

for the Second Circuit

EXHIBITS

7-18-68 N.Y.S.E.

76-6189

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellant,

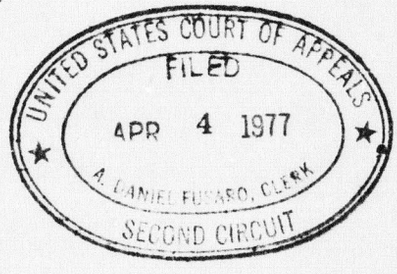
v.

BAUSCH & LOMB INCORPORATED and
DAINEL G. SCHUMAN

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of New York

EXHIBITS - VOLUME II



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SECURITIES AND EXCHANGE COMMISSION

Releases

RELEASE NO. 5180
August 16, 1971

8/19/1971
CFW

SECURITIES ACT OF 1933

GUIDELINES FOR THE RELEASE OF INFORMATION BY ISSUERS WHOSE SECURITIES ARE IN REGISTRATION

The Commission today took note of situations when issuers whose securities are "in registration" 1/ may have refused to answer legitimate inquiries from stockholders, financial analysts, the press or other persons concerning the company or some aspect of its business. The Commission hereby emphasizes that there is no basis in the securities acts or in any policy of the Commission which would justify the practice of non-disclosure of factual information by a publicly held company on the grounds that it has securities in registration under the Securities Act of 1933 ("Act"). Neither a company in registration nor its representatives should instigate publicity for the purpose of facilitating the sale of securities in a proposed offering. Further, any publication of information by a company in registration other than by means of a statutory prospectus should be limited to factual information and should not include such things as predictions, projections, forecasts or opinions with respect to value.

A basic purpose of the Act and the Securities Exchange Act of 1934 is to require dissemination of adequate and accurate information concerning issuers and their securities in connection with the offer or sale of securities to the public, and the publication periodically of material business and financial facts, knowledge of which is essential to an informed trading market in such securities. It has been asserted that the increasing obligations and incentives of corporations to make timely disclosures concerning their affairs creates a possible conflict with statutory restrictions on publication of information concerning a company which has securities in registration. As the Commission has stated in previously issued releases this conflict may be more apparent than real. Disclosure of factual information in response to inquiries or resulting from a duty to make prompt disclosure under the antifraud provisions of the securities acts or the timely disclosure policies of self-regulatory organizations, at a time when a registered offering of securities is contemplated or in process, can and should be effected in a manner which will not unduly influence the proposed offering. 2/

1/ "In registration" is used herein to refer to the entire process of registration, at least from the time an issuer reaches an understanding with the broker-dealer which is to act as managing underwriter prior to the filing of a registration statement and the period of 40 to 90 days during which dealers must deliver a prospectus.

2/ Under Rule 135, as recently amended by Securities Act Release No. 5101, for example, a notice given by an issuer that it proposes to make a public

Statutory Requirements

In order for issuers and their representatives to avoid problems in responding to inquiries, it is essential that such persons be familiar with the statutory requirements governing this area. Generally speaking, Section 5(c) of the Act makes it unlawful for any person directly or indirectly to make use of any means or instruments of interstate commerce or of the mails to offer to sell a security unless a registration statement has been filed with the Commission as to such security. Questions arise from time to time because many persons do not realize that the phrase "offer to sell" is broadly defined by the Act and has been liberally construed by the courts and Commission. For example, the publication of information and statements, and publicity efforts, made in advance of a proposed financing which have the effect of conditioning the public mind or arousing public interest in the issuer or in its securities constitutes an offer in violation of the Act. The same holds true with respect to publication of information which is part of a selling effort between the filing date and the effective date of a registration statement.

Section 5(a) of the Act makes it unlawful to sell a security unless a registration statement with respect to such security has become effective. Section 5(b) makes it unlawful to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to transmit a prospectus with respect to any security as to which a registration statement has been filed unless such prospectus contains the information specified by Section 10 of the Act. Pitfalls may be encountered because the term "prospectus" has a broad meaning. The Act defines prospectus to include any notice, circular, advertisement, letter or communication written or by radio or television, which offers any security for sale except that any communication sent after the effective date of a registration statement shall not be deemed a prospectus if, prior to or at the same time with such a communication, a written prospectus meeting the requirements of Section 10 3/ of the Act was sent or given. 4/

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offering of securities to be registered under the Act is not deemed to constitute an offer of such securities for sale if the notice states that the offering will be made only by means of a prospectus and contains only certain specified information.

3/ Such a prospectus would contain information concerning, among other things, the issuer's financial condition, business, property, management, and certain information about the offering including the manner of the offering and the intended use of the proceeds received.

4/ However, Section 2(10) of the Act and Rule 134 promulgated pursuant thereto exclude from the term "prospectus" the use of the "Tombstone ad" and the "identifying statement" described thereunder. Furthermore, Rules 433, 434 and 434A relate to the use of preliminary and summary prospectuses.

Guidelines

The Commission strongly suggests that all issuers establish internal procedures designed to avoid problems relating to the release of corporate information when in registration. As stated above, issuers and their representatives should not initiate publicity when in registration, but should nevertheless respond to legitimate inquiries for factual information about the company's financial condition and business operations. Further, care should be exercised so that, for example, predictions, projections, forecasts, estimates and opinions concerning value are not given with respect to such things, among other, as sales and earnings and value of the issuer's securities.

It has been suggested that the Commission promulgate an all inclusive list of permissible and prohibited activities in this area. This is not feasible for the reason that determinations are based upon the particular facts of each case. However, the Commission as a matter of policy encourages the flow of factual information to shareholders and the investing public. Issuers in this regard should:

1. Continue to advertise products and services.

2. Continue to send out customary quarterly, annual and other periodic reports to stockholders.

3. Continue to publish proxy statements and send out dividend notices.

4. Continue to make announcements to the press with respect to factual business and financial developments; i.e., receipt of a contract, the settlement of a strike, the opening of a plant, or similar events of interest to the community in which the business operates.

5. Answer unsolicited telephone inquiries from stockholders, financial analysts, the press and others concerning factual information.

6. Observe an "open door" policy in responding to unsolicited inquiries concerning factual matters from securities analysts, financial analysts, security holders, and participants in the communications field who have a legitimate interest in the corporation's affairs.

7. Continue to hold stockholder meetings as scheduled and to answer shareholders' inquiries at stockholder meetings relating to factual matters.

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In order to curtail problems in this area, issuers in this regard should avoid:

1. Issuance of forecasts, projections, or predictions relating but not limited to revenues, income, or earnings per share.

2. Publishing opinions concerning values.

In the event a company publicly releases material information concerning new corporate developments during the period that a registration statement is pending, the registration statement should be amended at or prior to the time the information is released. If this is not done and such information is publicly released through inadvertance, the pending registration statement should be promptly amended to reflect such information.

The determination of whether an item of information or publicity could be deemed to constitute an offer - a step in the selling effort - in violation of Section 5 must be made by the issuer in the light of all the facts and circumstances surrounding each case. The Commission recognizes that questions may arise from time to time with respect to the release of information by companies in registration and, while the statutory obligation always rests with the company and can never be shifted to the staff, the staff will be available for consultation concerning such questions. It is not the function of the staff to draft corporate press releases. If a company, however, desires to consult with the staff as to the application of the statutory requirements to a particular case, the staff will continue to be available, and in this regard the pertinent facts should be set forth in written form and submitted in sufficient time to allow due consideration.

SECTION A 2

Part I

TIMELY DISCLOSURE

Timely and Adequate Disclosure of Corporate News

A corporation whose stock is listed on the New York Stock Exchange is expected to release quickly to the public any news or information which might reasonably be expected to materially affect the market for securities. This is one of the most important and fundamental purposes of the listing agreement which each corporation enters into with the Exchange. The agreement is discussed in greater detail in the latter part of this Section beginning on page A—27.

A corporation should also act promptly to dispel unfounded rumors which result in unusual market activity or price variations.

The discussion which follows will assist a listed corporation in making adequate and timely disclosure to its shareholders, the financial community, and the investing public and thus provide the basis for a market for its securities which will be fair to all participants.

Exchange Market Surveillance

For its part, the Exchange maintains a continuous market surveillance program through its Division of Stock Watch. The program is designed to closely review the markets in those securities in which unusal price and volume changes occur or where there is a large unexplained influx of buy or sell orders. Under such circumstances, the Company may be called by a member of the Department of Stock List to inquire about any company developments which have not been publicly announced but which could be responsible for unusual market activity. Where the market appears to be reflecting undisclosed information, the Corporation will normally be requested to make it public immediately. Occasionally it may be necessary to carry out a stock watch inquiry after the fact and the Exchange may request such information from the Company as may be necessary to complete such an inquiry.

The listing agreement provides that the Corporation will furnish to the Exchange on demand such information concerning the Corporation as the Exchange may reasonably require.

Listing Representative—Department of Stock List

Each listed company is assigned to a Listing Representative who is a member of the staff of the Department of Stock List. This representative serves as the liaison point for the Corporation and the Exchange. When the assigned representative is not available, another member of the staff will handle any inquiry, request, or report so that there will be no unnecessary delay in attending to listed company matters. The Secretary of the corporation is kept advised of the person serving in this capacity.

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Preliminary discussions on important matters may be undertaken by listed company officials with the assurance that extreme security measures have been adopted by the Exchange to avoid revealing any confidential information which a listed company may disclose.

Internal Handling of Confidential Corporate Matters

Unusual market activity or a substantial price change has on occasion occurred in a company's securities shortly before the announcement of an important corporate action or development. Such incidents are extremely embarrassing and damaging to both the Company and the Exchange since the public may quickly conclude that someone acted on the basis of "inside" information.

Negotiations leading to acquisitions and mergers, stock splits, the making of arrangements preparatory to an exchange or tender offer, changes in dividend rates or earnings, calls for redemption, new contracts, products, or discoveries, are the type of developments where the risk of untimely and inadvertent disclosure of corporate plans is most likely to occur. Frequently, these matters require discussion and study by corporate officials before final decisions can be made. Accordingly, extreme care must be used in order to keep the information on a confidential basis.

WHERE IT IS POSSIBLE TO CONFINE FORMAL OR INFORMAL DISCUSSIONS TO A SMALL GROUP OF THE TOP MANAGEMENT OF THE COMPANY OR COMPANIES INVOLVED, AND THEIR INDIVIDUAL CONFIDENTIAL ADVISORS WHERE ADEQUATE SECURITY CAN BE MAINTAINED, PREMATURE PUBLIC ANNOUNCEMENT MAY PROPERLY BE AVOIDED. In this regard, the market action of a company's securities should be closely watched at a time when consideration is being given to important corporate matters. If unusual market activity should arise, the Company should be prepared to make an immediate public announcement of the matter.

At some point it usually becomes necessary to involve other persons to conduct preliminary studies or assist in other preparations for contemplated transactions, e.g., business appraisals, tentative financing arrangements, attitude of large outside holders, availability of major blocks of stock, engineering studies, market analyses and surveys, etc. Experience has shown that maintaining security at this point is virtually impossible. Accordingly, fairness requires that the Company make an immediate public announcement as soon as confidential disclosures relating to such important matters are made to "outsiders."

The extent of the disclosures will depend upon the stage of discussion, studies, or negotiations. So far as possible, public statements should be definite as to price, ratio, timing and/or any other pertinent information necessary to permit a reasonable evaluation of the matter. As a minimum, they should include those disclosures made to "outsiders." Where an initial announcement cannot be specific or complete, it will need to be supplemented from time to time as more definitive or different terms are discussed or determined.

Corporate employees, as well as directors and officers, should be regularly reminded as a matter of policy that they must not disclose confidential information they may receive in the course of their duties and must not attempt to

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take advantage of such information themselves.

In view of the importance of this matter and the potential difficulties involved, the Exchange suggests that a periodic review be made by each company of the manner in which confidential information is being handled within its own organization. A reminder notice of the Company's policy to those in sensitive areas might also be helpful from time to time.

The effective implementation of the foregoing is essential to the maintenance of a fair and orderly securities market for the benefit of a company and its shareholders. It should minimize the occasions where the Exchange finds it necessary to temporarily halt trading in a security due to information leaks or rumors in connection with significant corporate transactions.

While the procedures are directed primarily at situations involving two or more companies, they are equally applicable to major corporate developments involving a single company. Announcements of this type should usually be handled by telephone alert to the Department of Stock List.

Relationship Between Company Officials and Security Analysts, Institutional Investors, etc.

Security analysts play an increasingly important role in the evaluation and interpretation of the financial affairs of listed companies. Annual reports, quarterly reports, and interim releases cannot by their nature provide all of the financial and statistical data that should be available to the investing public. The Exchange recommends that corporations observe an "open door" policy in their relations with security analysts, financial writers, shareowners, and others who have a legitimate investment interest in the company's affairs.

A company should not give information to one inquirer which it would not give to another. Nor should it reveal information it would not willingly give to the press for publication. Thus, for corporations to give advance earnings, dividend, stock split, merger, or tender information to analysts, whether representing an institution, brokerage house, investment advisor, large stockholder, or anyone else, would be clearly incompatible with Exchange policy. On the other hand, it should not withhold information in which analysts or other members of the investing public have a warrantable interest.

If during the course of a discussion with analysts substantive material not previously published is disclosed, that material should be simultaneously released to the public. The various security analysts societies usually have a regular procedure to be followed where formal presentations are made. The company should follow these same precautions when dealing with groups of industry analysts in small or closed meetings.

The competent analyst depends upon his professional skills and broad industry knowledge in making his evaluations and preparing his reports and does not need the type of inside information that could lead to unfairness in the marketplace.

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Part II

PROCEDURE FOR PUBLIC RELEASE OF INFORMATION

Immediate Release Policy

The normal method of publication of important corporate data is by means of a press release. This may be either by telephone or in written form. Any release of information that could reasonably be expected to have an impact on the market for a company's securities should be given to the wire services and the press FOR IMMEDIATE RELEASE. Clearly, a corporation cannot properly assume responsibility for the security of such important information in the hands of persons or organizations beyond its control.

The spirit of the IMMEDIATE RELEASE policy is not considered to be violated on weekends where a "Hold for Sunday or Monday A.M.'s" is used to obtain a broad public release of the news. This procedure facilitates the combination of a press release with a mailing to shareholders.

Annual and quarterly earnings, dividend announcements, acquisitions mergers, tender offers, stock splits, and major management changes are examples of news items that should be handled on an immediate release basis. News of major new products, contract awards, expansion plans, and discoveries very often fall into the same category. Unfavorable news should be reported as promptly and candidly as the favorable. Reluctance or unwillingness to release a negative story or an attempt to disguise unfavorable news endangers a management's reputation for integrity. Changes in accounting methods to mask such occurrences can have a similar long-term impact.

It should be a corporation's primary concern to assure that news will be handled in proper perspective. This necessitates appropriate restraint, good judgment, and careful adherence to the facts. Any projections of financial data, for instance, should be soundly based, appropriately qualified, conservative and factual. Excessive or misleading conservatism should be avoided. Likewise, the repetitive release of essentially the same information is not appropriate.

Few things are more damaging to a corporation's stockholder relations or to the general public's regard for corporate securities than information improperly withheld whether inadvertently or willfully. On the other hand, a mere deluge of press releases is not to be used since important items can become confused with trivia.

Premature announcements of new products whose commercial application cannot yet be realistically evaluated should be avoided. So should overly optimistic forecasts, exaggerated claims and unwarranted promises. And should subsequent developments indicate that performance will not match earlier projections, this too should be reported and explained.

Judgment must be exercised as to the timing of a public release on those corporate developments where the immediate release policy is not involved or where disclosure would endanger the company's goals or provide information helpful to a competitor. In these cases, it is helpful to weigh the fairness to both present and potential stockholders who at any given moment may be considering buying or selling the company's stock.

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Dealing With Rumors or Unusual Market Activity

The market action of a company's securities should be closely watched at a time when consideration is being given to significant corporate matters. If rumors or unusual market activity indicate that information on impending developments has leaked out, a frank and explicit announcement is clearly required. If rumors are in fact false or inaccurate, they should be promptly denied or clarified. If they are correct, however, an immediate, candid statement to the public as to the state of negotiations or the state of development of corporate plans in the rumored area must be made directly and openly. Such statements are essential despite the business inconvenience which may be caused and even though the matter may not as yet have been presented to the company's Board of Directors for consideration.

TELEPHONE ALERT TO THE DEPARTMENT OF STOCK LIST OF THE EXCHANGE

When the announcement of news of a material event or a statement dealing with a rumor which calls for **IMMEDIATE RELEASE** is made shortly before the opening or during market hours (normally 10 a.m. to 3:30 p.m., New York time), it is recommended that the Department of Stock List of the Exchange be notified by telephone no later than simultaneously with the release of the announcement to the news media. If the Exchange receives such notification in time, it will be in a position to consider whether, in the opinion of the Exchange, trading in the security should be halted temporarily. A delay in trading, which normally would last about 15 minutes after the appearance of the news on the Dow-Jones news ticker, provides a period for the public evaluation of the announcement. A longer delay in trading may be necessary if there is an unusual influx of orders. The Exchange attempts to keep such interruptions in the continuous auction market to a minimum. However, where events transpire during market hours, the overall importance of fairness to all those participating in the market demands that these procedures be followed.

The direct dial telephone numbers of the Department of Stock List personnel of the Exchange appear on the Title Page of this Manual. Normally, the call should be directed to the Listing Representative assigned to the Company. A telephone alert should be confirmed promptly in writing.

Release to Newspapers and News Wire Services

News which ought to be the subject of immediate publicity must be released by the fastest available means. The "fastest available means" may vary in individual cases and according to the time of day. Ordinarily, this requires a release to the public press by telephone, telegraph, or hand delivery, or some combination thereof. Transmittal of such a release to the press solely by mail is not considered satisfactory. Similarly, release of such news exclusively to the local press outside of New York City would not be sufficient for adequate and prompt disclosure to the investing public.

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To insure adequate coverage, releases requiring immediate publicity should be given to Dow Jones & Company, Inc., to Reuters Economic Services, and to Associated Press and United Press International. These releases should also be given to one or more of the newspapers of general circulation in New York City which regularly publish financial news.

The foregoing distribution of releases should be regarded as a minimum. Many companies may wish to give additional prompt distribution to their releases, particularly to newspapers in cities where the company is headquartered or has plants or other major facilities.

Two copies of any such press release should be sent promptly to the Exchange, to the attention of the Department of Stock List.

The New York City addresses and telephone numbers of these national news-wire services are:

Associated Press, 50 Rockefeller Plaza, 262-8125; after 7:00 p.m., 262-6071-2-3 or 4.

Dow Jones & Company, Inc., 30 Broad Street, HAnover 2-3115, Exts. 521, 522, 523; after 5:45 p.m., Exts. 451, 452.

Reuters Economic Services, 1212 Avenue of the Americas, 581-4250; after 6:30 p.m., 582-4030.

United Press International, 220 East 42 Street, MUrray Hill 2-0400, Ext. 371; after 6:00 p.m., Ext. 325.

It is suggested that every news release include the name and telephone number of a company official who will be available if a newspaper or news wire service desires to confirm or clarify the release with the company.

Part III

DIRECTOR AND OFFICER STOCK TRANSACTIONS

Many stockholders feel that directors and officers should have a meaningful investment in the companies they manage. The extent of this ownership, naturally, would vary in accordance with the financial circumstances of the persons involved. As shareowners themselves, directors are more likely to represent the viewpoint of other shareowners whose interests they are charged with protecting. Similarly, officers–the executive management group–may well perform more effectively with the incentive of stock options or a share in the equity ownership of the corporation.

The Exchange has encouraged the broadening of shareownership through stock option and employee stock purchase plans, especially those plans that include all or a large portion of the company's employees. The approval of stockholders has been a prerequisite of Exchange listing of new shares for the more limited key officer plans.

However, the widespread endorsement of director and officer shareownership brings with it questions that concern the timing of their stock transactions. When may

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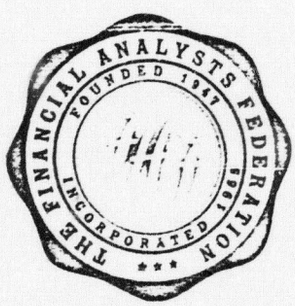
CORPORATE DISCLOSURE AND INSIDER INFORMATION

A Panel Interview

with

MR. PHILIP A. LOOMIS, JR.
General Counsel,
The Securities and Exchange Commission



Presented at the Fall Conference of

THE FINANCIAL ANALYSTS FEDERATION

Held in Atlanta, Georgia

October 7, 1968

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EXCHANGE COMMISSION

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MR. C. REED PARKER, C.F.A.
Treasurer, Financial Analysts Federation
Vice President, Duff, Anderson & Clark, Inc.

MR. BEN V. WRIGHT, C.F.A.
Chairman, F.A.F. Corporate Information Committee
Vice President, Model, Roland & Co., Inc.

MR. BLOCK:

We have had a good deal of excitement for the financial analysts in the last couple of months. It all shows up in the headlines. They say things like: "Crisis in disclosure"; "shell-shocked security analysts"; "inhibited insiders"; "corporate misinformation"; "SEC cracks down"; "anxious attorneys," and "unequal customers."

Well, this is what this program is about, and we are quite fortunate in having a man who can give us a better and clearer view of the solutions to some of the problems which recent court cases and S.E.C. actions have headlined. He is Philip A. Loomis, Jr., the General Counsel of the SEC. That position, of course, is the senior staff position in the SEC, and if you will ask almost any knowledgeable attorney about him, he will tell you that Mr. Loomis is one of the outstanding attorneys in the United States. He is going to be quizzed by a panel of three officials of the Financial Analysts Federation.

Tom Lenagh is Chairman of our Government Relations Committee, Past President of the F.A.F. and Treasurer of the Ford Foundation.

Ben V. Wright, Jr., is the Chairman of the F.A.F. Corporate Information Committee; and Vice-President, Model, Roland and Co., Inc.

C. Reed Parker is the Treasurer of Financial Analysts Federation and Vice President of Duff, Anderson & Clark, Inc.

They are going to ask prepared questions of Mr. Loomis; Mr. Loomis going to give informal, conversational answers.

MR. LENAGH:

I wish first to thank Mr. Loomis for coming at a considerable personal sacrifice.

The cooperation between the SEC and the Government Relations Committee of the Financial Analysts Federation has been excellent over the years, and I want to start off by saying that they have seen us and listened to us on every occasion we have asked to be heard, and the cooperation of SEC, the Commissioners and staff, with the Financial Analysts Federation has been and is excellent.

We know that, as analysts, the flow of information from some corporations has been either slowing down or shut off in this recent period. We know that most of us, particularly those practicing field analysts, have been quite concerned. We know that corporate management has been confused, and that in many cases the legal counsel of corporations have been advising the corporations to do and say nothing in this period of uncertainty. It seemed, therefore, that if we could get the top attorney from the SEC to address us that we might dispel some of the existing confusion. That's the essence and the background of why we are having this part of the program. It seems very clear also to us that the attorney who advises the corporation and corporation management will pay more attention to the General Counsel of the SEC in regard to this matter than probably anyone else in the country. And he agreed to come. I again want to thank him for it.

I would like to start off, Mr. Loomis, by calling your attention to a pamphlet which I recommend all of you to get if you do not have it, called *Expanded Policy on Timely Disclosure,* put out by the New York Stock Exchange in July of this year.

The first sentence in this pamphlet states: "A corporation whose stock is listed on the New York Stock Exchange is expected to release quickly to the public any new information which might reasonably be expected to materially affect the market for securities."

The FAF must, and wholeheartedly does, endorse the concept of timely and adequate disclosure. Such information is important and even vital to assist us in fulfilling our role in the investment process—a role we believe is vital to a healthy functioning of the capital markets and in turn capitalism as we know it in this country. Yet, for some time in the past, Mr. Loomis, and particularly in the last few months, analysts have become confused and alarmed at the interruption in the flow of corporate information as the result of genuine confusion on the part of corporate management and especially their legal advisers as to how they should proceed.

As a result of this, the Federation, through our President, George Bissell, decided to hold our first public press conference last month. I would just like very briefly to go over part of the statement released then as a prelude to the first question:

"The Financial Analysts Federation is concerned about the effect on the corporate reporting process resulting from the recent events related to so-called 'inside information.' . . . Indeed, the Federation notes rapidly growing confusion and doubt on the part of both corporate executives and financial analysts as to their appropriate role in fulfilling their obligations to shareholders and the investing public in general.

"A number of cases already have been reported by members of the Federation where the flow of legitimate corporate information has declined sharply, or even has been eliminated. Verbal communication by means of interviews, or scheduled management appearances before investment audiences seem to have been most affected. In a few instances this reflects the fact that the present unsettled environment presents a ready excuse for reluctant corporate executives to hide from the spotlight of shareholder inspection and evaluation. For the vast majority of corporate management, however, in the light of these new and conflicting views about appropriate conduct concerning dissemination of information to the public at large, the current atmosphere poses the question, 'Have previous moral, ethical, and legal standards in disseminating corporate information changed, and if so, by what rules am I now to be guided?' "

Mr. Loomis, the first question I would like to ask is if you care to make some general comments as to the disclosure process which might help to clear up some of this current confusion, and then we might proceed to more specific questions.

MR. LOOMIS:

I think, at the outset, I should make the standard disclaimer. The Commission, as a matter of policy, disclaims responsibility for any private publication of any of its employees.

The views that I will express hereafter are mine and do not necessarily reflect the views of the Commission or of my colleagues upon the staff of the Commission. Turning now to my comments, we are in entire agreement with the New York Stock Exchange disclosure statement. The keystone of that seems to be, first, that corporations have an obligation to make public disclosure of material facts—and I mean important facts—as soon as this is practicable.

Secondly, that the corporations should continue to meet the analysts and answer their questions in an appropriate way, and I recently advised several large corporations whose people called me up to ask if they should go forward with their meetings with analysts, and I said, "Yes. You may proceed."

The problem has revolved, to some degree, around the concept of what use can be made of inside information. Now, in the first place, the question is, "What is inside information?" The Commission's cases and proceedings so far involved information having several characteristics: It is undisclosed, and, generally, it is of sharp and immediate significance. It is not merely one link in a chain of analytical information and that is, of course, your basis of judgment. Thirdly, it is, according to the person who has it, be he a corporate executive, an underwriter, or what have you, information received in confidence for a purpose other than to use it for the person's own advantage and to the disadvantage of the investing public in the market.

Your ordinary work as analysts, as I understand it from talking to analysts, does not involve slinking around trying to get this kind of information and get an edge on somebody, make a quick killing on the market. Your ordinary function—and it is a very important one—is to, by all available means, including analysis of economic trends, published material and personal impressions of management, to arrive at informed judgments and to communicate these to whomever you are working with. This is a very important process.

MR. LENAGH:

Mr. Loomis, as analysts we sense that many corporate executives are uncomfortable about being uncommunicative wit analysts but are being advised by their inside or outside counsel that saying nothing is the easier policy to defend in this period. One corporate president recently told me, "I don't like what my attorney's telling me; it's silly, but as long as I'm hiring him I guess I have to follow his advice."

In your opinion, has the legal profession over-reacted to the recent events related to the corporate reporting process?

MR. LOOMIS:

The tendency of legal counsel is to be cautious. With caution, you don't get into any trouble, and this is particularly true when you are in a state of some uncertainty. But I do think that in some instances some counsel, at least, have over-reacted.

MR. LENAGH:

Has your office been consulted in any meaningful way by corporate officials or their attorneys as to what the SEC would consider proper conduct and improper conduct?

MR. LOOMIS:

As I say, several corporate executives called me up with respect to the subject and last week certain distinguished corporation lawyers from New York met with myself and my associates and we spent most of the morning talking about these problems.

MR. LENAGH:

In other words, these were fairly recent developments. Initially, that was not the case; is that right?

MR. LOOMIS:

Not right away, no. You people were almost the first ones to see us about it.

MR. LENAGH:

I have a very specific question, here. If a major corporation—or any corporation—sent out this sort of notice to analysts, and I quote: "Due to the current uncertainty as to the propriety of furnishing information to financial analysts, I have been advised by my senior management for the time being to limit my comments to matters already on the public record."

If this corporate official or his counsel called your office, what would be your answer to that question?

MR. LOOMIS:

I would say that he did not have to so limit himself, that it's a matter of judgment. The type of inside information which you are concerned with is a rare commodity, and all of you know that you don't often get it in answer to your questions.

MR. LENAGH:

Mr. Loomis, if a corporation agreed to appear before one of our Analysts' societies but because of the present situation said that "We prefer not to have a question and answer period," and then called you and said, "Do you think a question and answer period is proper?" What would be your reply?

MR. LOOMIS:

It is proper.

MR. LENAGH:

Mr. Loomis, is your office prepared to, or are you preparing any guidelines for corporate management to clarify the present confusion, or do you prefer to be asked on each specific question?

MR. LOOMIS:

We don't prefer to be asked each specific question. On the other hand, general guidelines which have the advantage that analysts may use them in all cases are beyond our means at the moment. I think that once the fundamental principles become better understood, capable people will be able to see if there is a problem and work it out within the organization.

MR. LENAGH:

Interviews with management play an increasingly important role in the evaluation and interpretation of the financial affairs of listed companies. Annual reports, quarterly reports and any similar releases cannot by their nature provide all the financial and statistical data that should be available to the investing public. The New York Stock Exchange recommends that corporations observe an "open door" policy in their relation to security analysts, financial writers, shareowners and others interested in investment in the stock market. In your judgment, has anything happened in the past few months which would make that recommendation inappropriate today?

MR. LOOMIS:

No.

MR. LENAGH:

And do you concur with its substance?

MR. LOOMIS:

Yes, I do.

MR. LENAGH:

Mr. Loomis, if a corporation agreed to appear before one of our Analysts' societies but because of the present situation said that "We prefer not to have a question and answer period" and then called you and said, "Do you think a question and answer period is proper?" What would be your reply?

Thank you very much.

Ben, I will turn this over to you.

MR. WRIGHT:

Mr. Loomis, I would like to ask a series of very short questions covering the general subject of meetings between company officers, individual shareholders, investors, analysts

and others. And with your permission I would like to confine these questions to the subject of the meetings between corporate officers and analysts and leave the questions of the substance of what is said to the second series of questions.

The first question, is it proper for a company officer to address a group of financial analysts at a luncheon meeting?

MR. LOOMIS:

Yes, certainly it is. I would like to say that there are occasionally some questions of policy as to who should be admitted to these luncheons, but these are questions of policy, I think, and not of law.

MR. WRIGHT:

Is it proper for a company officer to appear at a private luncheon or dinner meeting where the attendance is restricted to 10 or 20 people?

MR. LOOMIS:

Certainly, there is no legal inhibition on that.

MR. WRIGHT:

Is it proper for a company officer to appear before a group of investment people who are industry specialists?

MR. LOOMIS:

Surely.

MR. WRIGHT:

Is it proper for a company officer to meet with an individual investor, analyst or stockholder?

MR. LOOMIS:

It certainly is. It's quite proper.

MR. WRIGHT:

How about telephone calls?

MR. LOOMIS:

I gather that in your business everybody calls everybody on the telephone, and we certainly have no objections to it.

MR. WRIGHT:

Is there any reason to change the practice of the last several years under which company officers meet with investment groups informally and formally on a fairly frequent basis?

MR. LOOMIS:

No, there is not, and, in fact, I think that is a good thing for the securities market to have this flow of information.

MR. WRIGHT:

Next, Mr. Loomis, I would like to discuss the general area of questioning that might occur between a security analyst or investor and a company officer.

Is it proper for the company officer to discuss industry conditions at such a meeting? And by "industry conditions" I mean such things as the volume of imports of steel, the projected volume of imports next year, the possibility of import quotas, the plans of the industry to secure protection for their markets against the rising volume of imports? There are, of course, similar situations in other industries.

MR. LOOMIS:

I would say that all of these are proper subjects for discussion. Of course, the corporate officer has to watch a little what his answers are. But generally I think he's entirely proper, and he really doesn't have to worry about anything except to be accurate.

MR. WRIGHT:

When you say "except be accurate," I want to remember that in response to this next question. Is it proper for a company officer to discuss industry volume projections for next year and normal growth rates of demand for the industry's product?

MR. LOOMIS:

Well, this raises the question of predictions, though this isn't the type of prediction that we are most concerned with. The Commission normally has not permitted use of projections of sales or earnings in a prospectus. This policy long antedates my time. It's based, I believe, upon the assumption that ordinary investors who read a prospectus as distinct from the experts, will be overly impressed with these projections and will think they are certain to come true.

MR. WRIGHT:

Also, over the years we have encountered an unscrupulous fringe among promoters whose predictions are pretty far out. We don't want them going out under our auspices.

On the other hand, we are aware that projections legitimately prepared and analyzed critically by someone such as a skilled analyst are regarded as a useful tool in your trade, and in that context I see no reason why they could not be used for that purpose.

MR. WRIGHT:

Thank you, sir. Is it proper to discuss projected levels of capital expenditures for the industry?

MR. LOOMIS:

Yes. In fact, we do that in our capital expenditure survey.

MR. WRIGHT:

Is it proper to discuss the projected level of industry demand in relation to industry capacity as indicated by announced new facilities?

MR. LOOMIS:

I would think that it would be perfectly proper to discuss that.

MR. WRIGHT:

Is it proper to discuss the competitive impact of one new major entry into an industry or one new major plant in a small geographical area?

MR. LOOMIS:

I see no reason why not. It would presumably be of interest to the analyst.

MR. WRIGHT:

Is it proper to discuss the impact on industry demand of a significant change in styling? And I have in mind, here, the shoes that the pretty little girls in the short skirts are wearing these days?

MR. LOOMIS:

It's certainly an interesting subject. How you may base an analysis on it is beyond my comprehension, but I see no reason why you shouldn't try.

MR. WRIGHT:

Is it proper to discuss the competitor's new model or new marketing plans and its impact on the remainder of the industry?

MR. LOOMIS:

Surely.

MR. WRIGHT:

Is it proper to discuss the company's industry penetration, or share of market, either actual or expected?

MR. LOOMIS:

Yes, subject, of course, to the problem of expected penetration, which you people have to view, perhaps, with a critical eye. It may be a little over-optimistic.

MR. WRIGHT:

I think "may be" is perhaps the understatement of the morning.

How about the labor situation, sir, the emergence of a new union, the struggle within the union for now vacant posts of president, the impact of a recent settlement by an allied union with another industry or another company—these kinds of subjects?

MR. LOOMIS:

They're surely proper subjects for discussion. In fact, we attempt to get, whenever there are significant developments in this area, a discussion of the new developments in a prospectus.

MR. WRIGHT:

Would any of the subjects that I have asked questions on in the last few minutes be the kind of information that would require a public disclosure to the press, or is this background information of the kind that is helpful only to a careful student and hence is not necessary to be disseminated widely? Also, in my opinion, some of these things are the kind of material, sir, that a company officer doesn't want to be quoted on.

MR. LOOMIS:

Well, it seems to me that this is a type of question your group are really better qualified to answer than I am. Obviously, some of this information is important; on the other hand, some of it, I suspect, is not, so to speak, suitable for general dissemination to the press, nor would the press in some instances be interested in it. The problem is that of drawing the line between the type of information which any individual must recognize as significant and make use of it and the type which takes some of the skills which you have. And I would guess that much of this is in the latter category.

MR. WRIGHT:

For the last few minutes we have been talking about industry matters, and now I address myself to some specific questions that have been asked of company officers about their own company.

Is it proper to discuss projected capital expenditures by that particular company?

MR. LOOMIS:

Surely it is.

MR. WRIGHT:

Projected depreciation levels?

MR. LOOMIS:

Surely.

MR. WRIGHT:

Levels or maximum levels of expected bank borrowing?

MR. LOOMIS:

Surely.

MR. WRIGHT:

Inventory accumulation plans, if any?

MR. LOOMIS:

Surely. Again, some of this is the type of thing we try to get into the hands of the public by reports, prospectuses and so forth.

MR. WRIGHT:

Unfortunately, from the investors' standpoint, there are a number of industries where price competition is a serious factor. Can a company officer discuss realized prices in relation to list prices?

MR. LOOMIS:

If he wants to, I'm sure he can.

MR. WRIGHT:

Is it proper for a company officer to discuss these matters in relation to a competitor's new plant?

MR. LOOMIS:

If he knows enough about it.

MR. WRIGHT:

Can a company officer discuss discounts from listed prices that are being offered for spot purchases of a basic raw material? Here I have in mind such things as aluminum pig, crude oil, pulp, et cetera.

MR. LOOMIS:

I would think so. I think so. I think this is the kind of thing that, as I have gathered from my conversations, analysts in this particular industry find significant, and consequently I don't think it should be withheld from them, although somehow, I, like some other investors, didn't appreciate the importance until some expert tells me the significance of it.

MR. WRIGHT:

How about the difference in the price level between the world price and the domestic price in some basic commodity?

MR. LOOMIS:

Surely.

MR. WRIGHT:

Is it proper for a company officer to discuss the impact on the industry earnings of any of the above price pressures on his product?

MR. LOOMIS:

Yes. But this is a somewhat more sensitive area. As I mentioned earlier, projections of what the company's earnings are going to be are both important and delicate, because investors can be badly hurt if they get an improperly prepared projection of earnings which they take as gospel, while you people, I presume, do not take it as gospel, and make a useful filter for it.

MR. WRIGHT:

Thank you, sir, for that plug.

Now, with regard to future earnings, quite often company officials will, at the time of the annual meeting, express the belief or perhaps hope that the earnings for the then current year will be somewhat more than the earnings that have been reported for the year just finished. Later on in the year would it be proper for an investor, shareholder or analyst to discuss with the management operating conditions in the light of those expected at the time that statement was made at the annual meeting?

MR. LOOMIS:

Yes, and I think it could well be useful.

If he knows enough about it.

MR. WRIGHT:

Would it be proper for a company officer to discuss the implications on earnings of a volume of business somewhat larger than that forecast at the time of the annual meeting?

MR. LOOMIS:

Yes, provided they don't go overboard.

MR. WRIGHT:

How about discussing the implications on earnings of a disappointing level of business?

MR. LOOMIS:

Surely, if they want to.

MR. WRIGHT:

Could they properly discuss the rising cost of overhead and the increased volume needed to maintain their earnings at the level of the recent past?

MR. LOOMIS:

I think they could, and, again, I welcome this.

MR. WRIGHT:

Can one properly discuss break-even points?

MR. LOOMIS:

Yes, and people do, as I understand. We've never objected.

MR. WRIGHT:

Quite often a company officer will be asked by someone who is making estimates, "I am estimating $5.00 per share this year. Am I in the ball park?"

MR. LOOMIS:

I gather this deals with a situation where the analyst has made his own estimate and he wants to cross-check with the company to see that it is not too far out of line. That, I think, is entirely proper and might provide a useful check on the analyst's work. On the other hand, as the stock exchange points out, the company should be careful not to underwrite the analyst's projections as their own, unless they are in a position, by reason of knowledge of how good it is and what he has done, to be sure that it is a reasonable estimate.

MR. WRIGHT:

Now, just one question, sir, and I'm through. In the January-February issue of the *Harvard Business Review*, 1967, Arthur Fleischer, Jr. wrote an article "Corporate Disclo-

sure/Insider Trading", which I recommend that you all read. In this article he said: "Company officials, however, are often confronted with projections made by brokerage firms and investment banking houses and asked to confirm these figures. Here again, I think the conservative course of action would be to decline comment on the projection. At the same time, it woud be appropriate to call the analyst's attention to any egregious error in his assumptions or calculations."

I am wondering about a hypothetical case where several people are publishing estimates that are far off the mark. Would it be proper for the company officer to call to the attention of these people the exuberance of these estimates?

MR. LOOMIS:

This is the same thing that I was discussing earlier. I can see how Art Fleischer would suggest the cautious course for company management so as to dissociate themselves as far as possible from the projections when they do not know how they were arrived at. On the other hand, I do feel that a service might be done by corporate management in calling attention through the appropriate channels to the institution whose forecasts have been circulated around the market that, in the opinion of management, that is just plain wrong.

MR. WRIGHT:

Mr. Loomis, my thanks to you for a very enlightening session.

And now, I will turn this microphone over to Reed Parker.

MR. PARKER:

It seems that there are a number of factors involved in trying to come up with any definition of what is "inside information?" And perhaps I could list some of these and see whether you agree or not.

In the first place, the "inside information" we're talking about—it is certainly something that is not widely known in the investment community. Would you agree?

MR. LOOMIS:

Yes. In fact, in most of the cases of inside information that we have had, it's not only not widely known but the company's policy has been for some business reason to keep it from being known at all in the investment community. To be sure that it is a reasonable estimate.

MR. PARKER:

Secondly, were it to be widely known, it would have a substantial and immediate effect on the price of the publicly traded securities of the company in question.

MR. LOOMIS:

Well, that, of course, is a matter of judgment. It's very hard to tell what impact on the market would occur and how fast, because you can't be sure what the market is going to do on the day it comes out. Nevertheless the cases we have been involved in have included the element of market impact, which could be anticipated to be fairly significant and immediate, although the immediate part may be followed by a delayed reaction on the part of others often of greater dimensions over the ensuing days and weeks, as the case may be.

MR. PARKER:

So that here we have two more words, "substantial" and "immediate." "Substantial," I suppose is not subject to a precise definition or the same definition for all securities, but shouldn't this involve in general a price change perceptibly in excess of the given security's day-to-day or week-to-week trading norms—in percentages of market value terms?

MR. LOOMIS:

We have not endeavored to lay down any hard and fast rules in terms of the relation of the expected market impact to the ordinary fluctuations of the security. But, nevertheless, I think there is considerable merit in this analysis. It would normally be expected to have an impact rather more than the usual day-to-day or even week-to-week fluctuations.

MR. PARKER:

As to the term "immediate"—and assume here dissemination of the inside information were quite rapid and pervasive—would "immediate" mean within a trading day or two after dissemination?

MR. LOOMIS:

Well, again, this concept has not been elucidated so far in any of the cases or Commission decisions. I think the cases which we have brought were all cases which had this characteristic, and I am inclined to feel that we are looking for something in that general area, and that this is a useful, though not an official, analysis.

MR. PARKER:

Now, let's move on to some of the apparent "conflict of interest" problems that arise for a person who has "inside information" and who has competing obligations—one to hold the "inside information" confidential and the other to act upon it for the benefit of others. First, let us suppose that should there be some "inside information" concerning Company A which has been received by an underwriter in his capacity as underwriter for Company A. What does he do with this versus his obligation to his firm's investment advisory and brokerage customers?

MR. LOOMIS:

Well, before I try to get into that specific and difficult question, I would like to point out another characteristic of inside information. As it has so far developed in the cases, although you can find language in law review articles and speeches and, perhaps, even in court decisions, which suggest a broader rule, in most instances, inside information not only has the characteristics that were outlined a minute ago which basically go to its materiality, its importance. There is also the question of how it was received by the person who gets it. In most instances — for example, in the Cady Roberts case, the information was received by the persons in question because of their relationship to the company, the relationship of a director in that instance. They would not have received it had they not had that relationship. It was given to them for a corporate purpose or use in the conduct of the corporation's business, not for the purpose of making a profit on it in the stock market. And in the cases we have so far seen, those that we have brought — this actually has been so or has allegedly been so — and I don't want to get into the facts of any pending cases. But this characteristic is alluded to in the court's opinion in the Texas Gulf case. That is information acquired pursuant to a relationship and not for use in making a profit in the market.

Now, turning to this underwriter's situation, I would think that if information was imparted to a prospective underwriter because the company had a duty to him and to the public to make sure that this information got into the prospectus which would be forthcoming shortly, and he knew that that was the only reason that he got it, so that he could produce an accurate prospectus as required by law, then he shouldn't use it to try to make a quick market profit before the prospectus comes out, either for himself or for his customers.

MR. PARKER:

Somewhat the same kind of question. Suppose "inside information" concerning Company A has been received by a commercial bank in its capacity as a lender to Company A. What should the lending institution do in fulfilling its fiduciary obligation to the bank's investment advisory and trust customers?

MR. LOOMIS:

We have never had that question, and it is difficult for me to answer it because of the fact that our relationships with the banks are not on the same level as they are with other institutions. Banks are largely exempt from our substantive regulations and are regulated by the banking authorities. So, I don't know enough about banking practices to give you a definite answer. But I would suspect that the situation with respect to truly inside information received by a bank in its capacity as a lender might be not too dissimilar from the position of the underwriter.

MR. PARKER:

Suppose that an analyst in the process of visiting Company A, just in the normal pursuit of his duties, somehow or other does receive "inside information." What does he do with this in relation to his obligations to his employer and the customers of his employer?

MR. LOOMIS:

This is a problem that really hasn't been answered yet. One would hope that it wouldn't happen very often. Indeed, I think it is desirable for analysts to avoid, by whatever means they can, putting themselves in this situation. They should not seek to encourage corporate officers to give them inside information of the type that I have referred to — something that is being kept confidential for a corporate purpose. If it comes to them by reason of plain mistake or stupidity on the part of a corporate official, I would think that, legally, they perhaps are not doing anything wrong, but they are, nevertheless, going to get themselves and the company in some trouble, because people with nasty minds will suspect that there was some conspiracy going on around here. Consequently it might be prudent, at least, for them to arrange for the release of this information before making use of it, though I'm not suggesting that if they don't they have violated the law. That has not yet been generally determined in that context.

MR. PARKER:

Suppose the analyst receives, again, truly "inside information" in the context that we are talking about here about Company A from a source outside Company A, perhaps from a competitor or perhaps at the corner bar or some place outside the company.

MR. LOOMIS:

It has been our view — I think it is still our view — that because of the absence of the analyst's participating in a breach of duty which may have occurred somewhere along the line, the analyst is home free, so to speak, in that situation.

MR. PARKER:

Now, in terms of the kind of relationships we have just been talking about — particularly the underwriter versus the broker's business, and the bank as lender versus the bank as a trustee, we have been talking about "inside information" in what is a fairly stringent definition of that term. What about all the rest of the information, *non-inside* information, gained by the underwriter as he works with Company A, or the bank as he works as a lender with Company A; what amount of this information is it reasonable to have flow over to the other side of the business?

MR. LOOMIS:

Well, I suppose if you analyzed this thing in a simple, logical way, if it is non-inside information by definition it is non-inside information, and consequently the firm may use it in the course of its business. On the other hand, this assumes the ability to separate inside information from non-inside information in the mind, and I doubt if they are necessarily that divided into water-tight compartments. On the other hand, I am aware that not only by reason of these underwriting type relationships but in the regular course of your business as analysts, you receive a great deal of information of various types that the public probably doesn't have, mainly because the public isn't interested in it and doesn't understand its significance. And if this is information which, as the stock exchange points out, the company would give to any person having a legitimate interest who asked for it — analyst, stockholder and so forth — then I know of no inhibitions on its use.

MR. PARKER:

A public relations executive has recently suggested publicly that no company management representative should talk to an analyst outside the presence of legal or public relations counsel. What do you think of such a suggestion?

MR. LOOMIS:

I don't think that it is in any way necessary. It looks as if the public relations counsel was looking for a job. But, aside from that, some companies do have a policy where a transcript is made of every meeting with analysts, of having company counsel review it and see if there is anything there which shouldn't be there, and if that can be done without inconveniencing anyone, it may be a desirable safeguard.

MR. PARKER:

What would you suggest that an analyst or a stockholder could do when he is confronted with the problem of a company management who states that "On advice of counsel, we can't talk with you" — first, let us say, "at all"?

MR. LOOMIS:

Well, as I have said earlier, I believe that advice is incorrect. Your association has already, I gather, announced publicly that in their view it's incorrect; I concur.

MR. PARKER:

I suspect maybe the answers are the same as if the company should say, "I can't talk about anything that's not already been communicated to our stockholders," or to some broad segment of the public?

MR. LOOMIS:

That is a very nice and cautious course, but I don't think the law requires it. Again, the test that the stock exchange suggests is, "Is this confidential information which the company wouldn't give to a person who came in and asked for it? Are they slipping it to this particular analyst because they expect something in return?" Then, you've got a problem.

But aside from that, I don't think the mere fact that it has not already been disseminated—perhaps because the company doesn't want to send their stockholders something the size of a telephone book—makes it improper for them to tell an analyst.

MR. PARKER:

Would *not* make it improper?

MR. LOOMIS:

That's right.

MR. PARKER:

Or, suppose the management says, "We can't talk without the advice of counsel about earning prospects"?

MR. LOOMIS:

Well, there, as you know, we are on more sensitive ground. I think that a corporation has no legal obligation to decline to talk to a competent and responsible analyst about earning prospects, provided they don't go overboard and are not trying to give their stock a little jiggle. And it's up to the analyst to tell the difference, and I suspect most of you can.

MR. PARKER:

Or, if the management should say, "We can't talk about the trends in our business prospects?"

MR. LOOMIS:

I think they can and should.

MR. PARKER:

What should the analyst do in a situation where he has received some information and he really can't tell for sure whether it's "inside information" or not within the context of this very narrow definition, but perhaps his experience suggests that it is?

MR. LOOMIS:

Well, again, this assumes that he just somehow came across it without having set about deliberately to obtain inside information, and he has no reason to believe that someone is slipping it to him in the hope of receiving a benefit in return; then, I don't think he is inhibited. As I said earlier, if he hears it in a bar, well, that's okay. His only problem here is that while he may not have actually violated anything, his story that he just somehow came upon it has to be a creditable one, or else there may be a problem.

MR. PARKER:

If the management were to discover that "inside information" on a specific subject is beginning to leak out or is likely to leak out in the near future, what steps should that management take?

MR. LOOMIS:

The New York Stock Exchange says in the statement referred to, that in such a contingency management should promptly release the information to the public, even if it would otherwise prefer not to, and I would agree.

MR. PARKER:

Many bankers and brokers, including some security analysts, are on boards of directors of publicly held corporations. Because of their positions as directors, they receive "inside information" on a regular basis. Do you think that this is too dangerous a position for such a person to be in, and what should he do about it?

MR. LOOMIS:

This, I think, is a matter of individual judgment and decision. There are risks in this relationship, particularly for a brokerage firm. It can make the firm uncomfortable if they have information which they know their customers could use, but they can't give it to them. The Stock Exchange, again, discusses this point in their statement and says that where a director who also is affiliated with a brokerage firm receives inside information in his capacity as director, it is his duty to the corporation of which he is director not to make use of that information to the market advantage of his firm and his customers, that it is his duty not to make use of it and to keep it quiet. And that is just the position he is in. It may be an uncomfortable one.

MR. PARKER:

On the other hand, many firms think it useful for themselves and their customers to be represented on boards of directors. There is certainly no law against it, but it is, I think, highly important that a representative of a brokerage firm who assumes a directorship recognizes not only the risks that are inherent but is particularly aware of and sensitive to his responsibilities as a director.

MR. PARKER:

Many analysts and their employers have large numbers of customers with widely divergent objectives. Where the analyst has reached a conclusion based on *non-inside* information, does it seem logical for him to advise all of his customers of his conclusions, even though the recommendations may be inappropriate for many of them?

MR. LOOMIS:

That really isn't a problem of inside information, as I see it; maybe I am misunderstanding it. It's more a problem of the responsibilities of someone who undertakes to advise his customers as to their investments, and I think that if the analyst feels that for some particular customers a particular security may be undesirable or unsuitable, then he shouldn't do anything which would lead to their buying it.

MR. PARKER:

Since the world is made up of imperfect human beings, it is not unusual for a company or an analyst to guess wrong on the importance of a piece of information. And management certainly sometimes fails to recognize the significance of a piece of information and the impact that it will have on the market place. These estimates may turn out to be either on the side of overemphasis or underemphasis of the significance of the matter. Similarly, analysts can make the same sort of mistakes. Are corporate managements and security analysts to be judged by what *subsequently* happens in the market place as to what is and what is not "inside information?"

MR. LOOMIS:

This was discussed at considerable length by the District Court in the Texas Gulf case, and the Court of Appeals agreed that there is a certain danger in these cases of judging people by hindsight, and obviously, I don't think this should be done. It is sometimes hard to avoid it. In the Texas Gulf proceedings, it was suggested by the Court of Appeals that the market movement which, in fact, resulted from the dissemination of this information, is evidence as to its materiality. I don't think there is any way of denying that. On the other hand, the fact that the market reaction was, as it sometimes seems, illogical and perhaps either under or over what could reasonably have been expected logically, should not affect the result. It's a question of looking at the thing at the time you had the problem, not in the light of hindsight.

MR. BLOCK:

That is the list of formal questions which we had prepared to offer Mr. Loomis. The remaining questions have been handed in by the audience.

The first question I would like to ask -- and this one is really my own — is the relationship between someone who provides investment services and the customer. The

customer relationship, as viewed by many people, is a continuing one. A typical example might be an investment counseling house that gives a "hot" issue to the first 10 names on his alphabetical customer list, because that's all of the stock he got on this "hot" issue. Then on the next "hot" issue he goes down the alphabet and gives it to the next several customers and tries to treat them equally *over a period of time*, as opposed to dividing up his 400 shares, one share each to 400 accounts and still having 200 accounts he can't give any to.

Would you say anything about that?

MR. LOOMIS:

I recognize that this is a practical problem for counseling firms which they deal with in various ways. I think that probably all I can say is, they should inform their customers of what their procedures are in this regard so the customer knows what he is getting into, and that insofar as is reasonable and practicable, these procedures should not be designed to favor particular customers over other customers.

MR. BLOCK:

Thank you.

Our next question is, "Is the SEC in the midst of establishing a new policy, or is it merely enforcing existing policies?"

MR. LOOMIS:

We believe that this is not a new policy. The doctrine that insiders can't trade on inside information has its roots in the common law back in the 19th century, though it was not very well developed then. It was picked up almost immediately after the Exchange Act was passed and the rule was adopted in cases going back into the early 40's.

Of course, our securities markets are changing. Somewhat more sophisticated questions and more sophisticated institutions are around now, and the law, as it always does, develops and changes to meet the changing circumstances, and the courts do a little more of that than we do, frankly. I don't think, however, that the foundations of what is being done are at all new, though some of the implications are.

MR. BLOCK:

The next question is, "Do you expect these recent events, such as the Merrill, Lynch, matter and court decisions, such as the Texas Gulf Sulphur case, will result in companies being more open with information or more closed?"

MR. LOOMIS:

Well, I don't want to talk about the Merrill, Lynch case. I'm not sure that really presents this problem, anyhow, because allegedly the information was about to be disclosed,

and it was four days later. But, as I understand it, we believe it likely that when the dust settles, corporations will be a little more apt to disclose material facts promptly in order to avoid embarrassment for insiders and others.

MR. BLOCK:

Here is a question that is very important. You have already had two questions asked you about analysts in bars, and as it was answered, one suspects that you may be encouraging them to visit bars more often. This question says, "Do I correctly understand from your answer that information which is one degree removed from the insider is not inside information; that is, heard in a bar or from another analyst?"

MR. LOOMIS:

The problem there is, is it good and reliable information from a reliable source?

As to another analyst, we haven't moved this far, as I attempted to convey. There is, I think, I do not guarantee, in these cases some element of the person who receives information having reason to believe that he is getting it because somebody is breaching his duty, and if you get it from another analyst, well, you may have no basis for such an assumption.

MR. BLOCK:

"As an analyst, is it proper to inform some investors — institutions, for example — of an opinion or recommendation in advance of broad dissemination to the client as a whole?"

I think that's really the Merrill, Lynch case.

MR. LOOMIS:

Well, again, I want to stay away from the Merrill, Lynch case. However, we have encountered situations, where some well-known investment advisory firms whose recommendations carry weight, the mere fact that X & Co. says that the stock is a buy is likely to lead not only X & Co.'s numerous customers but the market generally to react. In those situations, we have raised a question about the practice of such a firm in sending out advance telegraphic notations to a few clients as to what it's going to recommend next, and sending the rest of them the same recommendations by second-class mail. In this situation are they sure that the less-favored customers are entirely aware of what's going on?

MR. BLOCK:

"What about the corporate official who is obviously on the so-called 'insider's' list who unknowingly buys and sells stocks a few days before the release of information of some importance?"

MR. LOOMIS:

There is no such thing as an "insider's list," that I know of. Particularly in the Texas Gulf case, and the Commission in the Cady Roberts case indicated a disposition not to have any such lists. As I recall, in Texas Gulf there were one or two people who we thought knew about the mineral strike, but the evidence didn't show that they did, and upon the basis of that they got off.

MR. BLOCK:

"There is a fairly standard clause in most underwriting agreements that calls for the company to furnish continuing information periodically to the underwriting organization. Should this information be considered 'inside information'?"

MR. LOOMIS:

That, of course, depends on what it is. I think however that there is a problem developing in the practice of underwriters, particularly underwriters who bring a new company to the market and who have very considerable bargaining power, to insist that all types of information be furnished them before being disseminated to the public. Now, they are running a risk in collecting information which might put them in an embarrassing position.

MR. BLOCK:

"The thought that the analyst is home free on inside information from *non-company sources* is not clear, particularly with reference to the Texas Gulf case."

MR. LOOMIS:

Well, I don't know if I —

MR. BLOCK:

We may be back in the bar again.

MR. LOOMIS:

I think we may be back in the bar again. And in any event, in the Texas Gulf case we did not charge the so-called "tippee" with anything, but the Court in its opinion remarked that while it expressed no view as to whether their conduct was illegal, it may have been equally reprehensible. I think what was meant by that — and any lawyer can have his opinion — is that if there is some sort of a conspiracy going on so that the person who gets the information knows that it is not intended for him, and the person who gave it to him shouldn't have given it to him, then the Court regards acting on it as reprehensible. On the other hand, if there is no ground for such concern — and I may be wrong — the analyst is probably home free.

MR. BLOCK:

"Please discuss the propriety of an analyst's personal transactions in the securities which he follows or recommends to his customers, and do you have any suggested policy on this?"

MR. LOOMIS:

This is not an "inside information" question. This is a question of an analyst's, and particularly an investment adviser's, duties as an investment adviser. The Supreme Court of the United States, in the Capital Gains case, affirmed the Commission's view that it is a fraud for an investment adviser to trade on the market impact of his own advice. I think it may very well be equally wrong for an adviser to endeavor to make a profit by giving himself the benefit of his recommendations first.

MR. BLOCK:

"Since insiders are required to report their purchases and sales of stock, should they be required to report sales of put and call options?"

MR. LOOMIS:

Yes, they should, and if we haven't adopted a proposed rule that would require that, I'm not quite sure whether we have, but I think so, and we should.

MR. BLOCK:

"What questions are not appropriate for an analyst to ask management?"

MR. LOOMIS:

I don't think I can answer it at all without knowing what questions analysts do ask. I have been told by my friends in this group that it's not regarded as ethical practice for an analyst to try to pick up advance information on something like a dividend cut or a merger, by bringing pressure to bear on the company to give this information to him before they give it to anybody else, and I think that's right.

MR. BLOCK:

"The corporate president tells the analyst that a significant piece of news has been released to the Dow Jones News Service and proceeds to tell the analyst about it. Must the analyst wait until that information appears on the "broad tape" before releasing it to his office or customers?"

MR. LOOMIS:

Well, that question, at least the essential question was discussed in the Texas Gulf opinion. The question is when the inside information ceases to be inside information be-

cause it has been disseminated to the public. The Court declined to lay down any general, broad rule and gave us the suggestion that we assume the pleasant task of providing one. But the Court did suggest that it was improper to put in your buy or sell order after the information had been given to Dow Jones but knowing that it had not yet appeared.

MR. BLOCK:

"If a company is aware that current quarterly earnings will be disappointing, may this be disclosed to an analyst without simultaneous public disclosure?"

MR. LOOMIS:

If the company knows or is quite sure that its earnings are going to be significantly disappointing, whether or not it is illegal to tell an analyst before disseminating it, it would I think, be contrary to the Stock Exchange's policies, with which we agree.

MR. BLOCK:

"If the brokerage firm recommends a security and an officer of the firm is a director of the company and is aware of "inside information" at the time of the recommendation, how can that officer prove he was not guilty of passing on "inside information" to his research department?"

MR. LOOMIS:

Well, he will just have to try to figure out where they got it from and document that information. That is one of the hazards of the relationship.

MR. BLOCK:

"Didn't the New York Stock Exchange statement indicate that any information given to an analyst shall also be disclosed to the public at the same time?"

MR. LOOMIS:

I think not, except, of course, that as to material information, one of the overriding aspects of their policy is that it shall be given to everybody just as promptly as possible.

MR. BLOCK:

"Announcements of merger discussions between Company A and a privately owned company for an undisclosed amount of stock are being made with increasing frequency. At what point is it incumbent upon Company A to make such information available publicly to his office or customers?"

MR. LOOMIS:

This is a very difficult problem. The Stock Exchange's statement that was referred to contains a good discussion of it. I think that when a proposed acquisition reaches a stage

where it's fairly definite, the company would be called or by the Stock Exchange to make some announcement. In any event, insiders might be prohibited from trading on the basis of their knowledge that this is what the deal is going to be. We have a case pending in the District Court which raises precisely that point. On the other hand, just to make life difficult for all of us, there are some companies which like to stir up a little excitement by announcing a contemplated acquisition which somehow never occurs. It's not an easy question and really requires an analysis of the facts in each case.

MR. BLOCK:

"Assume a major publicly owned company with sales exceeding a hundred million dollars and listed on the New York Stock Exchange introduces a new product. The analyst studies the potential impact of this product on sales and earnings and then for the first time meets with company management and discusses his conclusions, which are that the product will have a major impact on earnings per share. The company recognizes the estimates as being quite good and accurate. At this point no other release regarding the earnings impact of the product has been made. Does the confirmation of the analyst's projections at that time constitute 'inside information'?"

MR. LOOMIS:

I don't know from whose viewpoint you are looking at this. Is the analyst inhibited because his previously made computations were verified by the company? I think he should not be. On the other hand, if the company knows that the analyst is going to put this out and some people are going to get it, and it is all that important, I think under the Stock Exchange policy and for the benefit of all concerned, it's time for the company to make an announcement.

[illegible]
[illegible]
At what [illegible]
publicly?"

SEC COMMISSION

REMARKS OF RICHARD B. SMITH, COMMISSIONER,
UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
BEFORE THE COUNSELORS SECTION OF THE PUBLIC RELATIONS
SOCIETY OF AMERICA, CHICAGO, ILLINOIS, NOVEMBER 17, 1968

"INFORMATION AND THE SECURITIES MARKETS"

Although I certainly appreciate the opportunity to speak to you this afternoon, I must confess that at one point I developed some slight misgivings. When I first accepted your gracious invitation to speak, the Texas Gulf Sulphur case had not yet been decided by the Court of Appeals for the Second Circuit. At that time I thought that I might talk about some interesting and relatively non-controversial topic like the European approach to disclosure or the general role of public relations counselors in the disclosure process.

In the meantime, however, Texas Gulf has come down, and the Public Relations News has stated that "The practice of financial public relations is threatened with extinction if ... [the decision] is permitted to stand." This is certainly strong language. When I first read it, I felt a bit as though, when this Sunday came, you might have some sort of sacrificial ceremony in mind -- with me the sacrifice. Despite this initial apprehension, I am happy to be here.

I should state at the outset that what I shall say are my own views and do not necessarily reflect the views of other members of the Commission or of the staff of the Commission.

I hope that I can use this opportunity to suggest to you that the concept in Texas Gulf is both a rather logical and a practical development, one that flows from our national commitment to broad private ownership of American industry and the present day environment where for the most part our citizens' access to such ownership is in the secondary trading markets, as distinct from the new issues markets. I shall try to develop these points later, because I think it essential to understand the broad policy context of these Rule 10b-5 developments before judging the propriety of their particular applications.

But, as to the fear of extinction, I ask you whether it is just conceivable that this is an overreaction? The burden of my message this afternoon, in fact, is that the eventual result will

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be to increase rather than decrease the flow of corporate information and to make your function more rather than less important. After all, the Commission, too, must mend its public relations fences. It is important that both you and we see the same nexus between these developments and the unique nature and achievements of the American capital markets.

I do not mean to imply any criticism of your initial reaction to Texas Gulf. After all, lawsuits are never very pleasant things. And some corporate counsel have in fact advised their clients to restrict their public disclosures -- at least for the time being. It is expectable that counsel would lead their corporate clients down the road of caution, particularly when the law is uncertain. Probably some will continue to do so until the implications of Texas Gulf become more clear. But others have already recognized that this is only a short-term situation. Indeed, some knowledgeable people have claimed that any immediate decrease in corporate disclosures has been relatively slight.

It will probably be some time before the dust has fully settled, and substantial agreement is reached on the question whether Texas Gulf and other recent developments under Rule 10b-5 are consistent or inconsistent with the basic aims and philosophy of the securities laws. Until that time we can expect some continued uncertainty whether the wiser course for corporate officials is to increase or decrease the extent of the disclosures made by their corporations. If the result is a decrease, then clearly the Commission's effort has been counter-productive. But I don't think that the eventual result will be a decrease, and for a number of practical reasons.

For the some 6,000 widely held corporations that are subject to the periodic reporting requirements of the Securities Exchange Act the only open question is not whether to disclose any particular material development but whether to disclose it prior to the required reporting time.

Furthermore, if the corporation's securities are listed on the New York or American Stock Exchange, the corporation has certain contractual commitments to the exchange. In July of this year (a month before the appellate opinion in Texas Gulf) the New York Stock Exchange published a pamphlet entitled "Expanded Policy on Timely Disclosure." In the very first sentence it states "A corporation whose stock is listed on the New York Stock Exchange is expected to release quickly to the public any new information which might reasonably be expected to materially affect the market for securities." I am sure that you are all familiar with the provisions of the company manuals of the two exchanges in this area.

Even if increased disclosures were not affirmatively required by law or contract, they would make good business sense. Unless important corporate information can be restricted to only the most select group of corporate officials, the risk of a breach of corporate security can only be avoided by prompt public disclosure of the information. Particularly for large companies it is unreasonable to expect all potential insiders not to buy or sell for extended periods because of their company's non-disclosure policy. If all significant information about a corporation is disclosed promptly and fully, then it will be difficult to suggest that the insiders of the corporation have engaged in improper trading. A prohibition against trading on the basis of inside information gives a corporate insider a personal interest in making available to the public as much information about his corporation as he can. Could not this aspect of Texas Gulf lead to increased corporate disclosures?

Finally, in the competition for investment capital, funds tend to flow in the same direction as analyst interest and public confidence, and that interest and that confidence must rest in the end on the availability of information and assurances of fair dealing.

In this regard, I recently had occasion to talk with an English investment manager who regularly visits the United States in order to keep in touch with businesses in which his clients are invested. Shortly before I entered his office he had received calls from two companies in this country canceling appointments that had been arranged for a forthcoming trip of his. The companies had given no reason, or the Texas Gulf decision as the basis, for their action. My English friend stated that one of the reasons he and other Europeans liked to invest in American companies is the ready availability of information about them, both in published form and in informal discussions with analysts and other interested persons. The American traditions of open access and open accountability to public shareholders is an impressive one to those accustomed to European practices. He was concerned that there would occur here a regression in this respect. It was fairly clear to me that this English investment manager would be markedly less attracted to the American capital markets if our corporations adopted a policy of silence as a result of Texas Gulf.

I told him that for the practical reasons I have indicated here today I thought any interruption in proper access to American

managements would likely be only temporary. I also said, while I was sure this was not what he had in mind, to the extent large investors sought such meetings simply as inside pipelines to special information, meetings for such purposes were self-defeating. They destroyed the very characteristics he professed to admire in the American markets. To the extent, however, that such meetings were a forum for testing the meaning of public information, for filling in interstices in analysis, for forming a direct impression of the quality of the management, and so forth, I did not think there was anything in Texas Gulf that should preclude such meetings. In fact, so long as such meetings were not devices to provide material information to favorite investors so as to enable them to get a jump on the market, they advance the philosophy behind the federal securities laws. My English friend, of course, assured me that he was not interested in special inside information but did want the opportunity to exchange views with management and to get a better feel of the company.

The concern in the investment community on how Texas Gulf may affect relations between corporations and outside securities analysts is understandable. In this particular area there may even be some conflict between the two underlying purposes of Rule 10b-5. On the one hand, disclosures to securities analysts do serve as a means of conveying information to the investing public. This is particularly true since analysts will often be in a position to collect, evaluate and translate information into more meaningful form than would directly interest the average investor in its raw state. On the other hand, disclosures made to particular analysts for the first time will necessarily reach their own subscribers before they reach the remainder of the investing public.

I do not think that this problem is insoluble, or that corporations can do no more than regurgitate their prior public disclosures to analysts. There is nothing inherently wrong in meeting with analysts either singly or in groups. In my opinion, management is not prohibited from giving previously undisclosed information to a particular analyst if the same information would be given to any other responsible person who took the trouble to ask, and if the information is not of such major significance that fairness requires that it be given to all investors simultaneously through the news media. Of course, we are all human, and there may be times when information of an extraordinary nature slips out, either in answer to a perceptive question or in the course of a heated discussion. In that case the corporation should issue a

press release as soon afterwards as possible. I understand this to be essentially the position spelled out in the New York Stock Exchange's Company Manual, and I am in accord with it.

I know that there are a number of definitional and procedural questions that are in your mind. It would be impossible for me by the nature of the matter to spell out precise guides in my brief talk here or in the question and answer period following. I am sure you are aware though, that the Commission in its cases has focused on extraordinary information, the matters relating to a corporation that could hardly help but be important to a reasonable investor in deciding whether he should buy, sell or hold securities of the corporation, matters that would be likely to have substantial market impact. As the Commission's distinguished General Counsel, Phil Loomis, said recently in Atlanta, inside information is significant information that has not previously been publicly disclosed and, generally, is "not merely one link in a chain of analytical information."

The president of the New York Stock Exchange in a recent talk said he thought a good rule of thumb would be to ask yourself: "Would you buy or sell securities for your own account on the basis of this information?" I would agree with him that in all but a few cases the judgment would be an obvious one. I also liked the Exchange's general approach -- "When in doubt disclose." I found Harold Burson's article "Guidelines for Financial Disclosure" in the November issue of the Financial Executive magazine a good discussion of the definitional and procedural aspects. I commend it to you as a thoughtful treatment of the problems involved.

I do not expect that Texas Gulf can be the last word in this area. There are still some legal problems that must be worked out. Further elaboration of the application of the general standard of materiality to specific factual situations will be necessary. The problem of damages for misleading corporate publicity looms large. I would think that more flexible rules will have to be devised so as to afford some redress to injured investors without imposing Draconian monetary liabilities on the corporation and its innocent public shareholders. Problems such as these are not easy ones, but they can be solved if we continue to bear in mind the basic ends. I hope you can see that you and we are seeking the same basic ends, and that you should have nothing unreasonable to fear from the Commission.

There has also been some fear expressed that the Commission may use Texas Gulf to look over the shoulders of management every time it issues a press release. Let me make it clear that we do not expect to become after-the-fact rewrite men for all corporate publicity. The vast majority of corporate managements that diligently investigate the facts before issuing a release and then accurately summarize those facts in the release have nothing to fear from us. We are well aware that there are matters of judgment involved here. Press releases must often be prepared quickly, and we cannot expect them to be as precise or as artfully worded as registration statements.

I would like to conclude my talk by coming back to two points I suggested at the outset.

First is the economic context in which the disclosure concepts are being related to the trading markets. The vast bulk of securities transactions in the United States represent transfers of ownership of already outstanding securities rather than the purchase of new securities. In an interesting article in the August issue of The Institutional Investor magazine, Sidney Homer points out that in 1967 gross new issues of United States corporate equities, including stock issued on conversion of convertible securities, amounted to $4.7 billion. Looked at on a net basis, that is giving effect to repurchases and retirement of outstanding equities, the net new money raised amounted to only $2.3 billion. This compares with his estimate of gross purchases of equity securities, both listed and unlisted and including new issues, during 1967 of $151 billion.

Looked at another way, public offerings of common and preferred stocks for cash in 1967 aggregated $2.6 billion. In 1967 the volume of stock trading on the New York Stock Exchange was $162 billion. Thus, new offerings represented only 1.6% of the NYSE volume. Even in the immediate post-war years the dollar amount of new offerings never exceeded 12.5% of the volume on the NYSE and there has been a relatively steady decrease in this percentage since the Korean War to the less than 2% that existed in 1967.

Thus, when you look at the whole universe of securities transactions and the efficacy or pertinence of disclosure requirements, you can see that the trading markets are of overwhelming importance compared to new issues. There are many factors that

account for this, of course, including the enormous increase in institutional savings that has far outpaced the supply of new securities, the impact of mergers and acquisitions, the alternative of debt financing, and, most importantly, the accumulation of retained earnings by corporations in our prosperous economy which provides along with depreciation reserves the internal funds with which to finance new plant and equipment.

A factor in the retention of earnings is the willingness of American investors not to demand higher dividend payouts and to allow corporate managers to reinvest retained earnings. The capital gains tax advantages, I believe, account for only part of this investor willingness. I believe that an equally strong aspect is the confidence American investors have that they will be reasonably well informed about what management is doing with the retained earnings, and their confidence that when they wish to convert their equity interest in the corporation into money for whatever reason, they will be able to do so at a price representative of the value of the corporation at that time. Thus the liquidity and depth of the trading markets and the accuracy and fairness of their pricing system are important ingredients in investor confidence. These in turn depend upon a continuous flow of accurate information from the corporations.

I believe it is against this economic background that increasing disclosure attention is being given to purchasers and sellers of outstanding securities as distinct from the more classic disclosure provided to purchasers of new issues of securities.

The other point is the assumption or implicit premise in our securities laws, and in the standards of our national securities exchanges, that there is an affirmative public value for the society in broad private ownership of American industry. There is a strong national sense here in favor of having large numbers of the American population participate in the ownership and growth of the American economy.

The American public was first invited and encouraged to come into the securities markets in a massive way in the 1920's. It has been said that a basic mistake of that period was that the rules of the securities markets were then framed for the professionals and operated heavily in their favor and ultimately to the disadvantage of the large number of average investors who were coming into the market. As a result of the crash of 1929 and the ensuing depression there was a massive flight of confidence from the system.

Congress might have reacted in two ways to this development. It might have concluded that equity investment was too risky and not an appropriate vehicle for savings by the average citizen of ordinary means, that the purchase, sale and ownership of equity securities had better be left to the professionals, the very wealthy and institutions. Congress, however, never really considered this (an essentially European model) as a practicable alternative in a country with the large middle class that we have here. Instead, it opted in precisely the opposite direction..

Essentially, Congress reaffirmed the idea of wide private ownership of equities, and through the federal securities legislation established rules which it hoped would put the average American investor on a relative information parity. In effect, it said that the public belonged in, that investors were entitled to accurate and equal information and a fair and orderly market. Congress felt that this was the way in which confidence could be rebuilt in our securities markets. The expression of Congressional confidence in our private capital system is accentuated by its having determined on a disclosure system of regulation, rather than a rigid regulatory approach of a substantive character. It sought an effective balancing of the value of an individual's making his own decisions with the value of protecting him where he is unable to get the facts for himself, of the value of corporate management's freedom with its responsibilities to all the owners of the business.

It is a remarkable, uniquely American achievement. It is one that requires diligence on all our parts to preserve and to adapt to its phenomenal growth. We are on a course, compounded of faith in our capitalist ways and in the privilege of all Americans to participate, that speaks to the strength of our nation and its ideals. You here have an important, crucial role in helping to guide this course, and I have every confidence you will perform it well.

Thank you.

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REMARKS OF RICHARD B. SMITH, COMMISSIONER
UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
AT THE CENTER FOR RESEARCH IN SECURITY PRICES,
GRADUATE SCHOOL OF BUSINESS, THE UNIVERSITY OF
CHICAGO, MAY 8, 1969

"Corporate Disclosures to Security Analysts"

It was almost a year ago that I spoke here at the University of Chicago at the Seminar sponsored by the Center for Research in Security Prices. This Center has exercised a role of leadership in working for greater cooperation among economists and lawyers in analyzing the manifold aspects of our nation's securities markets. At my last appearance here, I spoke about some ways in which the much needed cooperation could take place. The title to my talk was "Equity and Efficiency in the Securities Markets," and I used the words "equity" and "efficiency" to refer respectively to the principal considerations of lawyers and economists.

Our topic this afternoon is "Quest for Optimum Rules Regarding Disclosure of Information." I shall deal with one aspect of that subject: corporate disclosures to security analysts. I do so for two reasons: first, because I thought it would be most relevant to you here and, second, because this aspect of the disclosure problem, perhaps more than any other, involves a possible conflict between considerations of equity and considerations of efficiency. I shall attempt to delineate that conflict and then offer some suggestions for dealing with it. In doing so, of course, in accordance with our customary practice, I speak only for myself and not for my colleagues or staff at the Commission.

The Job of the Security Analyst

There are presently some 15,000 security analysts in this country. Of these, approximately 12,000 have satisfied the three-year experience requirement and are members of the Financial Analysts Federation. These security analysts are a highly professional group and, according to the March 1968 survey of its members, 92 per cent of the analysts have at least a bachelor's degree and 48 per cent have at least one higher degree.

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I would also like to assure George and others that the Commission is very conscious of the fact that administrative agencies are a composite of functions that must be kept separate. In accordance with the Administrative Procedure Act and with general views of the way administrative agencies should operate, we go to great lengths to keep our judicial, enforcement and legislative (rule-making) functions separate.

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The breakdown of the businesses in which the particular analysts are employed is interesting:* 28 per cent are employed by investment dealers, and 20 per cent by commerical banks. These are the two largest employers of analysts. Looked at another way, investment dealers, counsellors and research firms together and up to 47 per cent of the analysts. The institutional investors--commercial banks, insurance companies, mutual funds, endowment and pension funds, and industrial corporations--had about 44 per cent. Thus, about half of the expert analytic effort is in the institutions and about half in the securities firms. The balance of nine per cent includes academic and miscellaneous categories.

In a commendable effort to upgrade the qualifications of the profession, the Federation administers a series of three examinations and confers the title of Chartered Financial Analyst on those members who pass the examinations. There are about 2,000 CFA's.

You could describe the security analysts's job as composed of three subjects with interrelated phases: the gathering of data; the digestion and interpretation of that data; and finally, the evaluation of the security. Now those analysts who are working as portfolio men may also be making the eventual investment decision. But that is not part of the analytic process as such. I shall focus my remarks this afternoon on the information-collecting phase. That is where conflict between equity and efficiency is most possible.

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*Business	Percent
Investment dealers	28
Investment counsellors	12
Investment research firms	7
	47
Commercial banks	20
Insurance companies	12
Mutual funds	6
Endowment/pension funds	2
Industrial corporations	4
	44
Academic/government	3
Other	6
	9

The Practical Problem

It is a practical problem to gather the data. The analyst begins with public sources, generally. In large part, they consist of formal documents required by the Commission: registration statements under the '33 Act for public offerings; registration statements under the '34 Act for listed or widely held OTC securities, proxy statements, information statements, annual reports to shareholders, and the periodic reports that are provided under the Commission's reporting system on an annual, semi-annual and current basis.

Some of these required documents have not been sufficiently accessible in the past to facilitate their maximum use by analysts. The new system that the Commission is using to reproduce documents on file there, I hope, is going some distance toward eliminating that dissemination problem.

In addition to the reports and other public documents required by the Commission, corporations customarily publish a wealth of data about themselves, either voluntarily or in response to formal or informal rules of stock exchanges or the National Association of Securities Dealers. In fact, due to the nature and timing of the reports required under the Commission's periodic reporting system, the most up-to-date information will probably be found in such sources as quarterly reports and corporate press releases, rather than in the Commission's public files. While additional improvements in the periodic reporting system are called for, in no case can the system become an appropriate vehicle for rapid and widespread disclosure.

Of course, the analyst may also turn to secondary sources for corporate information and he usually does. Any good research library will contain copies of the various statistical services and many of the advisory publications as well. The statistical services gather previously published data and put it in convenient form. Their reports do not usually contain unpublished information obtained directly from the corporation. The other advisory services are often useful tools for the analyst to compare his own interpretation of published data, but insofar as they or the statistical services contain or are based upon information not published by the corporation, they raise the very problems we are considering. Many analysts are unwilling to rely completely on

published data. In the first place, the published information about a corporation is often not sufficiently detailed for the analyst's purposes. To some extent this arises because of imperfections in the Commission's disclosure rules. For example, analysts are quite naturally interested in the breakdown of reported sales and earnings figures by product line or by lines of business. If the Commission adopts the proposed revision of the registration forms in this respect and then follows through with the recommendations of the disclosure study recently completed, direct contact between analysts and management to obtain this vital investment information should not be necessary.

In terms of the detail of the data, it is probably not feasible to satisfy the analyst's desire for information through published sources. Publication is expensive for the corporation and it is questionable whether it is appropriate to require all the shareholders to pay for the publication of in-depth information that is sought only by the more sophisticated analyst.

There are also certain types of information that are not susceptible to full disclosure on paper because they cannot be reduced to words or figures. One of the most important considerations for an analyst is an evaluation of the abilities and initiative of management. Although the paper record of past achievement is important in that evaluation, personal contact can also be important. An analyst considers his contact with management persons in the flesh, including an opportunity to see how they handle themselves, as an important part of the information-gathering phase of his work.

Finally, there are some types of information that are theoretically susceptible to public disclosure, but for policy reasons are not required to be disclosed to the public in published form. For example, the Commission does not require corporations to report their future competitive strategy. Nor do we require them to publish their internal projections of sales or earnings or capital expenditure. Indeed, we prohibit their publication in prospectuses. In the absence of any such requirement, corporations are ordinarily unwilling to put such information on the public record. If the information is not of extraordinary significance, however, they might be willing to talk off the record about such subjects to analysts whom they can trust not to quote

them. They might do so either by means of affirmative statements to the analyst on these subjects or by comments on the analysts' own stated guesses or conclusions. This is a delicate area in the relationship between a corporation and a security analyst, and I will come back to this later. Here I am simply trying to describe what the analyst seeks to do.

For various reasons the analyst does not complete the data-gathering phase when he has exhausted the published sources about the corporation, for the reasons I have indicated. He then turns directly to management for the additional information he desires. Sometimes, he does this in group meetings with other analysts or with the press present. At other times, he does it alone, either in person or by telephone. Whether singly or in groups, however, the reality is that analysts are constantly seeking to acquire information.

From economist's point of view, the analyst serves a useful function by thus expanding the market's information input. We certainly rely on the free market system rather than on Government fiat to allocate investment capital among competing commercial users. And the collective investment judgment that emerges from this market system is only as good as the individual judgments of which it is composed. They, in turn, can only be as good as the information on which they are based. Consequently, the more information the analysts can bring to the market, either expressly or through their recommendations, presumably the more efficiently the securities market should operate. Indeed the heartening trend toward greater professionalism in the securities business is due in large part to the growing importance of the analyst. It doesn't seem to me desirable to restrict analysts solely to published sources.

The Legal Problem

It is not enough to say that the security analyst performs an economically useful function that promotes efficiency. Considerations of fairness are also important considerations that promote equity. The Court of Appeals, in the Texas Gulf case, to which George Shinn referred earlier, had this to say:

> "The core of Rule 10b-5 is the implementation of the Congressional purpose that all investors should have equal access to the rewards of participation in securities transactions. It was the intent of Congress that all members of the investing public should be subject to identical market risks--which market risks include, of course, the risk that one's evaluative capacity or one's capital available to put at risk may exceed another's capacity or capital."

So note it is an equity and fairness concept and not an egalitarian one. In implementing this basic philosophy, the Court did not limit its decision to securities transactions by corporate officials on the basis of material inside information. It also held that the rule is violated by the practice of tipping--that is, passing on material inside information to others for use by them or their "sub-tippees" in effectuating securities transactions without disclosure or in recommending securities transactions on that basis. This prohibition on tipping, like the prohibition on trading itself, continues until the information has been made available to all parties to the pertinent securities transaction.

The legal consideration of equity thus imposes certain restrictions on disclosure that is other than by publication, and it bears some pondering. A securities analyst usually seeks this information about a corporation so that he can pass it on to his employer or clients, either explicitly or through a recommendation for their use in securities transactions. If the corporation provides material inside information to an analyst before it is otherwise available, and the analyst can be expected to pass it on for trading purposes, then the corporation itself may be held to have violated Rule 10b-5 by giving a tip.

Of course, disclosures may be made to analysts for other purposes than use in eventual transactions with the public. The analyst may be serving as an official or unofficial consultant to management, or he may be employed by a prospective purchaser of a corporation's securities in a private placement. I shall not deal with these perfectly proper confidential disclosures to particular

analysts. As long as the analyst isolates the information acquired in such contexts and does not allow it to be used for other purposes, either directly or by way of recommendation, there is no problem of tipping involved. I shall focus only on those disclosures to analysts that are made with the expectation that the information will be passed on or used directly for trading purposes.

Suggestions for Accommodating Both Equity and Efficiency

I have been describing briefly how the analyst functions, the importance of not restricting him to published information, and the legal problems raised by not doing so. I will attempt to offer some observations for our discussion this afternoon on the accommodation of equity and efficiency in this area.

In the first place, whatever the results when all analysts are treated equally, there is not warrant for favoritism in dealing with them. As the president of the New York Stock Exchange has aptly put it, "A caste system for release of corporate information...is not consistent with our disclosure standards." In the Glen Alden case, it was the Commission's belief that the corporation had given highly confidential and material corporate information to certain selected investors and would not have given that information to any responsible shareholders or other investors who requested it. There was simply no warrant for such discrimination.

Of course, I don't mean that the treatment of each analyst must be identical. It would be unrealistic to require that the president of a corporation spend as much time personally with an analyst for a small brokerage house as he would with an analyst associated with a large or major institution contemplating the acquisition of a large block of the corporation's stock. There is no reason why all the trappings and social amenities must be the same. But the information that is available to the two analysts should not differ substantially.

When that kind of favoritism is not present, there doesn't seem to be any reason why management may not speak to analysts either singly or in groups and disclose to them information that was not previously published by the corporation. If the information that is given is not material, there is no problem in such meetings. If it is, then a problem may exist.

With that, we come to the question of materiality. What do I mean by materiality in this context? In Texas Gulf the Court of Appeals stated the test of materiality in two ways: whether the information would be of importance to a reasonable investor, and whether "in reasonable and objective contemplation" its disclosure could be expected to affect the market value of the corporation's securities. Although the precise meaning of the phrase "in reasonable and objective contemplation" is not clear, the Commission has stated that it reads the phrase as designed to exclude insubstantial market variations. Thus, the two key words in applying the "materiality" standard--and I consider the two phrasings in practical effect to be merely different formulations of the same standard--are "important" and "substantial." They must be matters of major significance.

Some persons have asked why we don't simply sit down and write a list of those categories of information that are material and those that are not. The difficulty with such an endeavor is that it may tend to oversimplify a very complex area. For example, in his widely circulated panel interview with the Financial Analysts Federation, our distinguished general counsel, Phil Loomis, indicated a broad range of topics that management could properly discuss with analysts. In its recent guidelines on relations with analysts, the American Society of Corporate Secretaries has provided a similar list. But as both Phil and the Society pointed out, the topics so indicated may be material if they are sufficiently important. A converse caveat would have to be added to any list of topics that usually are material.

The reason for the problems inherent in devising such lists is that materiality depends on a large number of factors that often tend in different directions. The size of the corporation is important. A promising new product may be material for a small or medium size corporation, while the same product would not be material for a corporate giant. The same may be true of small mergers and acquisitions. Corporate trends are also significant. An unaudited profit and loss statement for one quarter that shows no change from the previous quarter has a different meaning for a utility with stable earnings over a long period than for a corporation that has been on a consistent upturn or downturn. Seasonal factors must also be considered. A corporation's existing

product mix is also a significant factor. An oil discovery for a one-product company in some other business may have greater importance than the same discovery by a company that is already in the oil business or that is already diversified. There is a very heavy element of judgment in deciding what is material, but that does not necessarily invalidate materiality as a standard.

I have mentioned only a few of the factors that must be considered in determining materiality: the size of the corporation, the previous corporate trends, seasonal factors, the product mix. That is just a start. And if the information is not definitive, in the sense that it relates to the possibility of a future development that has not yet occurred, both the likelihood of the development and its potential importance to the corporation must be considered. Drilling information indicating the possibility of a billion dollar mine may be material, while information indicating a similar degree of likelihood for a ten million dollar mine might not.

You must realize that I have been indirectly commenting on the feasibility of rules or guidelines on the materiality question. I shall expressly address myself to the general problem of rules or guidelines a little later. In the meantime, let me pass on to the next question--publication.

If the information is material, and it has not been previously published by the corporation, then we must ask whether the analyst is receiving information that is not available to the rest of the investing public. If the information is extraordinary in nature, then it seems to me it must be published before or concurrently with the time it is being given to a single analyst or to a group of analysts. The analyst and his clients are not entitled to any head start over the rest of the public. Of course, I recognize that, in answer to an especially perceptive question, a corporate official may on occasion say something that he did not intend to disclose in this manner. If he promptly arranges for the publication of this information and requests the analyst not to use it until this has been accomplished, I don't think that the corporate official should be censured because of a purely understandable mistake that he properly sets out to correct.

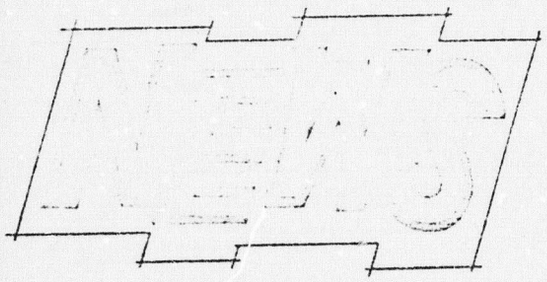
If the information is valuable to an astute analyst but not extraordinary in nature, the situation is somewhat different. Analysts and institutional investors are certainly reasonable investors, and information may be valuable to him that would not be important to the average member of the investing public. The problem of publication that I mentioned earlier is particularly applicable here. For example, the average investor would probably be satisfied with an announcement of a major mineral discovery that generally described the discovery, gave figures of its estimated magnitude, and indicated the nature of the data upon which these conclusions were based. The sophisticated analyst or institutional investor, however, may consider it important to ascertain the underlying data and draw his own conclusions about the discovery. On balance, since the basic discovery has already been announced, I don't believe that a press release is the only permissible way to disclose this underlying information.

Let me phrase this reasoning in legal terms. The test of whether or not material information is still considered "inside" might be stated in terms of availability rather than publication. Of course, publication is one means of making the information available, but there is no reason why it must be the only one when the information is not extraordinary. When the information involved is only further elaboration on developments that have already been publicized in a general (but meaningful) way, I believe that the information is sufficiently available if the corporation would make it available to any responsible person who inquired. Or to put it more generally, "availability" is a flexible concept that should be matched in each case to the nature of the information that is actually involved.

To sum up then, it seems to me that favoritism should be avoided in corporate relations with analysts. Individual and group meetings with analysts are certainly not forbidden; and previously unpublished information of a nonextraordinary character may be given out at such meetings. Information of an extraordinary nature should first be disclosed by publication. Earnings figures, whether extraordinary or not, should be published to all--that only makes sense. But there is nothing in Texas Gulf or in the other cases that would seem to me to prevent security analysts from performing their important economic functions by gathering data to supplement published sources.

The question of further rules and guidelines has been much debated of late. George Shinn clearly posed it this afternoon. In the Texas Gulf case itself the Court of Appeals for the Second Circuit suggested that the Commission promulgate further rules to clarify how soon after a public announcement insiders may trade upon the basis of important information contained in the announcement. Since then, thoughtful persons have lined up on both sides of the question of whether rules or guidelines are really feasible or desirable. Recently, the press gave coverage to my own comment sympathizing with those urging that an effort be made at devising guidelines in the area of inside information.

Too often, it seems to me, we debate abstractly among ourselves whether or not something is feasible or desirable but never get down to trying it. Instead of continuing the debate, or whatever you want to call it, over guidelines, perhaps we should set forth a systematic discussion of this particular segment of the insider information area. We should not delude ourselves that the attempt will necessarily be successful or that it is a simple matter. The trouble with any rule-making process, as anyone who has lived through it must know, is that when you start drafting specific rules, it leaves room for and gives access to doing the very thing you are trying to prevent. That doesn't bely the need to make the effort, but we can't assume that it is a simple chore or one that will necessarily provide any greater degree of certitude than we now have. A well researched, ranging treatment of the subject by the Commission might not end up more informative or much different than many of the guidelines that have already been suggested by private individuals and groups. They would, however, bear an authoritative basis that could give some guidance and assurance to the many persons of integrity who are eager to comply with the law. The Commission, in my opinion, should make every effort to provide guidance where that is possible. I think I have said enough as a basis for discussion and "quest." Thank you.



SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549
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THE ROLE OF FINANCIAL PUBLIC RELATIONS

An Address By

Ray Garrett, Jr., Chairman

Securities and Exchange Commission

March 13, 1974

CHICAGO PUBLICITY CLUB

Chicago-Sheraton Hotel
Chicago, Illinois

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I suppose there once must have been a time when the role of financial public relations officers was completely enjoyable and not terribly troublesome. Corporate earnings were up, new products were flooding the markets, investor participation in equity securities was brisk and companies generally had ready sources of capital available to use for corporate expansion. Time and the economy, however, have a way of changing things, and your roles are not exempt.

Today, the economy appears to be suffering from some malaise, and the securities industry definitely is, thus calling into question the capital-raising ability of the companies you serve and the securities industry we regulate. And, in these days of energy crisis, the fact that the companies you represent may turn a profit does not, of course, necessarily guarantee a return for you to the pleasantness and less trying days of by-gone eras. I can imagine, for example, the chagrin with which the financial public relations officials for our oil companies faced the rather dubious assignment of apologizing to the public for the profitable state in which these companies recently have found themselves.

Government regulation also has a way of breaking up the pleasant reveries of past glorious days. In those old days, corporate press releases and annual reports to shareholders were the principal means of disseminating corporate information to the public as well as to the corporation's own shareholders. Scant legal attention was then paid to most of these documents.

It was just ten years ago, however, that the Securities Exchange Act was amended to require the registration, under that Act, of the equity securities of companies that were not listed on any national securities exchange, if they were held by at least five hundred persons and the issuer had at least one million dollars in assets.

Prior to that time, the provisions of the Securities Exchange Act relating to the filing of periodic reports and proxy solicitations, as well as certain other matters, applied only to companies whose securities were listed with a national securities exchange. The '64 Amendments extended these provisions to virtually every company in the country that had any substantial public investor interest.

Since this expansion of our jurisdictional reach, we have been engaged in a steady expansion of corporate disclosure requirements, and the rules of the game, particularly in this era of expanding litigation under our general antifraud rule, Rule 10b-5, have also experienced a concomitant expansion. It might be said that we are still catching with up the significance of the enormous expansion of our federal laws as they relate to continuous disclosure. Why do we continue to place such emphasis on expanding corporate disclosure? Where are we heading?

One of the primary functions of our capital market system is to allocate capital in a fair and efficient manner. The continued availability of material corporate information is essential, in my view, to the refinement and maintenance of efficiency in our markets, an effort in which you play a major role. The underlying economic principle being that, in a free economy, capital will flow to where it will be the most profitable and, therefore, in the long run the most productive and useful, and that the decisions of many individual investors as to where capital will flow are better, overall and in the long run, than decisions made by an official body, however expert. It is not surprising, therefore, that, in his recent report to the

Treasury Department, entitled, "Public Policy for American Capital Markets," Professor Lorie reiterated the important need for a continual flow of corporate information for the efficiency of our capital markets.

The 1964 Amendments that thus extended the Securities Exchange Act to apply to American industry at large, led Milton Cohen, a Chicago attorney who had been the Director of the Commission's Special Study of the Securities Markets in the early 1960's, in addition to his other great achievements, to write an article in the Harvard Law Review, exploring the significance of the changes that had been made and suggesting that the time had come to concentrate upon a continuous disclosure process and, incidentally, to take some of the pressure off the single event of the registration of a public offering of securities.

He pointed out, in a most compelling fashion, that we had been providing elaborate information and protection to persons who purchased issues that were registered for public sale under the '33 Act, while we were under-informing and under-protecting persons who participated in our ordinary trading markets, a rather severe indictment, in view of the fact that the latter investors were and are, by far, more numerous and

more needing of protection. He also pointed out that, if the continuous disclosure system worked properly, Securities Act registration requirements could be met in large part by relying upon the regular disclosures made pursuant to the Securities Exchange Act and that the ordinary registration statement for the public distribution of securities could be a much simpler and less expensive document. Most of our thinking since then has been strongly influenced by these observations.

This integration of the disclosures in 1933 Act registration statements with 1934 Act reports has been manifested in new "short" registration forms, such as the S-16 and S-14, which permit '33 Act registration by incorporating '34 Act reports and proxy statements. This program has also greatly improved the disclosures made in 1934 Act reports. Annual reports required to be filed with us on our Form 10-K, which once served as a kind of adjunct to the annual report to shareholders, were amended in 1970 to expand the type of information required to be filed.

More recently, we have attempted to improve disclosures relating to financial statements -- principally, we have tried to make them understandable. The Commission has been moving to require financial statements that contain more information that will be useful to investors and their advisors.

Those of you who have responsibilities relating to stockholder relations in the furnishing of information to investors and publicly-owned companies, paid, I hope, particular attention to the Commission's recent release proposing to amend our rules to require that certain additional information be included in the annual reports companies subject to our proxy rules send to their shareholders.

Specifically, we have proposed that annual reports to shareholders contain information describing the general nature and scope of the issuer's business; disclosure of the contribution of a company's various lines of business to the company's sales and earnings; a five-year summary of earnings; information indicating the nature and scope of the liquidity and working capital requirements of the issuer; at a minimum the name and principal occupation or employment of each director and executive officer; the identification of the principal market in which the company's securities are traded and the high and low prices for each quarter over the most recent two years, together with information as to dividends paid and a statement of the company's dividend policy; and a statement that the company will send a copy of its annual report on Form 10-K to any securityholder on request.

In addition, we have proposed that financial information and data of financial highlights in the form of charts, graphs, figures and the like, do not present the results of operations or other financial information in a light either more or less favorable than do the financial statements included in the annual report to shareholders. We also would put an affirmative burden on the company, when it solicits proxies, to determine from the record-holders of its securities the number of beneficial owners of those securities and to provide sufficient copies of its annual report to shareholders as well as the other proxy materials to the recordholders on request, in order to permit the recordholders to provide copies to each beneficial owner. The company must also agree to pay the reasonable expenses incurred by the recordholder in transmitting these reports and other material.

Despite some reaction to the contrary, these proposals are not really very startling or revolutionary. At least, I imagine that a reasonably intelligent person looking at our financial laws and folkways for the first time, instead of being surprised at our proposals in this recent release, would be most curious as to why it took an agency, which frequently flaunts its devotion to disclosure, forty years to

get here. It might be a little difficult to come up with a convincing explanation, but to those of us who have been living through the process for many years, we realize that the matter is deeply affected by limitations in our statutory authority, fears of liability on the part of corporate management, resentment and resistance to the government intruding in the flow of communication between corporate management and its shareholders, and some substantive disagreement on the merits of some of the specific matters proposed.

We are, in effect, intruding upon the last and most important means through which corporate management annually communicates to its shareholders, and to the investment community at large, the information and ideas that it thinks they should have, in the form and manner in which management would like them to have it.

We are intruding and, then again, we are not. We are not proposing to make the annual report to shareholders a filed and processed document. While we propose to require that certain additional information be included in it, we are not proposing to mandate the exclusion of anything else that management wants to say, save only that it not be false and misleading. We are sticking to the position that the

annual report to shareholders is not, generally speaking, proxy material, although management can, by intent or inadvertence, cause such an annual report to become proxy material in certain circumstances.

But we are still faced with the question that has puzzled the Commission for forty years. How do we get the information spread to the persons who need it in a form in which they can use it? We have made some progress in making the official forms or reports filed with us available. Copies in the form of microfiche can be read, and hard copies procurred, both in Washington and in some of our regional offices. There is also a service for supplying these by mail upon request at a small charge. We should be able to improve this system shortly. But we will probably never be able to put the official Form 10-K, or the 10-Q's, or the 8-K's, in the hands of the ordinary investor or the ordinary registered representative discussing a purchase or sale with the ordinary investor with anything like the efficiency that is accomplished by the corporation's own annual report to shareholders. What should we do? We want completed accurate information spread abroad as widely as possible to be available to anybody interested in it and on the other hand we do not want to impose upon companies of all shapes and sizes unreasonable trouble and expense, and we don't want to impede the flow of communication from management to its shareholders.

It is tempting to require that, as the condition to soliciting proxies or the furnishing of an information statement, complete copies of the 10-K be sent to all shareholders along with the company's own annual report to the shareholders. This would certainly do the job, and in fact a few companies have decided to use their Form 10-K's as the bulk of their own annual report to shareholders. For companies that wish to do this, we are prepared to be relaxed and accommodating on matters of form and order or presentation. A few companies have simply included the Form 10-K as an appendix to their annual report. Others have offered voluntarily to furnish a copy of the 10-K to any shareholder requesting it, sometimes with a charge calculated to be less than the charge that the shareholder would have to pay if he ordered the hard copy through our regular service. If all companies were prepared to do this, it would certainly solve the problem of dissemination. But all companies are not so prepared, and, contrary to popular opinion, we do have some consideration for expense. Because of such consideration, we have not proposed requiring the mailing of the 10-K to all shareholders but only that the information in the annual report to shareholders should not be inconsistent with the information in

the 10-K in any material respect and that certain additional information be included. At this stage in the development of our continuous disclosure system, this seems to us like a reasonable compromise.

I think one criticism that could be fairly placed upon the Commission over the years has been that it has not been as imaginative and aggressive as it could be in getting information out where it belongs. We have been diligent about getting information furnished to us, but we have perhaps been too indulgent of the conceit that if we know it, everybody knows. As a matter of fact, this is obviously not true, and we should do more about it. Needless to say, we also should not rely solely upon official, mandatory documents for filing and circulation. The best communications system we have in this country is through the various media and the voluntary dissemination by corporations. Much of this is in your hands and the obligation to keep the American investor properly informed with respect to his securities is in large part upon your shoulders. In this regard, I urge you to take your professional responsibilities for public information seriously. I am sure that it comes naturally to think that my job is to promote my company and get its stock price up higher, but I hope it is now obvious to all of you that this is the

road to disappointment if not to prison.* Honesty, frankness, and completeness -- telling the man whose money is at stake the whole story, the good with the bad -- is the proper guide for today. No other way will work for very long. Any other way is frought with dangers to yourselves as well as to your clients.

Much of the development of the law on adequate responsibilities to insure fair and equal dissemination of material corporate information has been left to litigation under Securities Exchange Act Rule 10b-5, our general antifraud rule. In the last decade, there have, perhaps, been almost as many cases litigated under the one rule as under all of the other provisions of the federal securities laws combined. Of primary concern in Commission enforcement actions under that rule are the questions: have corporate officials selectively disclosed material corporate information to a limited number of analysts or other small groups of interested individuals; or have those officers themselves acted in the market upon material corporate information that has not been publicly disseminated? It should not require very much elaboration to state that both of these practices are viewed by us as being within the ambit of Rule 10b-5, and are unlawful.

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* SEC v. Pig 'n Whistle, U.S.D.C., N.D., Ill., Feb. 1972.

While the impact of many of the court decisions in this area as well as the institution of Commission actions under Rule 10b-5, has generally been salutary in causing corporate officials, securities analysts and other securities professionals to be more aware of their responsibilities under the federal securities laws, there are developments, which, in the long run, may prove undesirable.

For example, I recently received a letter from the managing editor of the Dow Jones News Service who expressed concern about the increasing number of publicly-owned companies that are refusing to give interviews to his reporters, based on the belief that such interviews are opposed by the Commission. In his view, this apparent drying-up of corporate information will have little effect on institutional investors, since they usually have other sources of information. The small investor, on the other hand, who has no other independent source of information, may be affected adversely by this trend.

Contrary to the impressions some companies may have, we have encouraged companies to make information generally available to investors and, in this connection, we have not attempted to discourage companies from discussing their affairs with responsible reporters or analysts. We do become concerned, of

course, when investors are given misleading information, or when some persons receive material information concerning public companies that other investors are unable to obtain.

Many companies have adopted policies designed to prevent violations of Rule 10b-5. Thus, for example, some companies limit discussions of their affairs with outsiders to conferences in which members of the financial press are limited, and some companies permit only certain of their officials to discuss the company's financial affairs with outsiders -- presumably persons who know what is happening in all aspects of the company's affairs and know what facts already have been made available to the public. Recent court decisions and settlements entered in Commission enforcement actions should spur other companies to adopt such guidelines. You can find those guidelines in the reported cases of SEC v. Lum's, Inc.* and SEC v. Liggett and Myers, Inc.**

I sense, however, that there is an increasing reluctance on the part of corporations to discuss their business activities with securities professionals, such as analysts and investment

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* CCH Fed. Sec. L. Rep., Current, ¶ 94,134 (S.D.N.Y. Sept. 13, 1973).

** Id. ¶ 94,204 (S.D.N.Y. Oct. 24, 1973).

advisers, as well as reporters. The prevailing attitude appears to be "why risk it -- the less said, the less likely it is that a violation of Rule 10b-5 will occur." Whatever logic may appear in this reasoning, this attitude is neither necessary nor healthy -- particularly at a time when efforts are being made on many fronts to induce small investors actively to participate in the equity markets.

To a significant extent, of course, the successful implementation of the continuous disclosure system we seek, which is aimed at keeping the trading markets informed, is dependent upon the existence of effective communications between the company and its shareholders, often through the conduits of the press and financial analysts. While the primary responsibility for the production of this information rests, of course, upon the issuers, everyone who participates in the process of getting this information to the public assumes a certain amount of responsibility for its adequacy and accuracy, the degree of which is dependent upon the particular circumstances.

With the proper understanding of the spirit and intent of the federal securities laws, those engaged in stockholder and investor relations and the dissemination of corporate information can be the best friends that the Commission can possibly have and that the American investor and his corporation can have.

NEWS

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549
(202) 755-4846

AN INSIDE LOOK AT RULE 10b-5

An Address By

Ray Garrett, Jr., Chairman

Securities and Exchange Commission

DEFENDANT'S EXH. No. 24-X
Marked for ID _____
Rec'd in Evidence _____
Page _____

April 10, 1975

AMERICAN LAW INSTITUTE
AMERICAN BAR ASSOCIATION

Madison Hotel
Washington, D.C.

In 1961, the Commission entered a decision in a private administrative proceeding involving the utilization of nonpublic material corporate information. The decision -- Cady, Roberts & Co. [1] -- was written largely by former Chairman Bill Cary, at a time when the Landis Report, [2] written in 1960 at the behest of President-elect Kennedy, shamed all commissioners into being less lazy than we are today. The opinion was written to memorialize a settlement of our administrative action and to permit the Commission to articulate the standards to which a person who receives inside information must adhere.

The Commission there recognized the establishment of a special relationship between a company and persons privy to internal corporate information not yet made public, and the imposition upon them of duties to the trading markets not to utilize that information for their own benefit.

1/ 40 S.E.C. 907 (1961).

2/ [Landis, James L.], Report on Regulatory Agencies To The President-Elect, Submitted by the Chairman of the Subcommittee on Administrative Practice and Procedure to the Senate Committee on the Judiciary (Comm. Print 1960).

The Commission's development of the law, at least in our own decisions and in the injunctive actions we have brought, has, no doubt, expanded the traditional Cady, Roberts concept of a special relationship and special obligations in terms of application, but not in terms of principle.

Our more recent decisions in the Investors Management 3/ and Faberge 4/ cases have dealt with persons who, by virtue of their special position, have, or may have, become privy to material nonpublic inside information which was not intended for the private use of anyone. And nothing we have done has eroded the essential concept we espoused in each of these cases -- that Rule 10b-5 was never intended to be what, in sports parlance, is often referred to as "the great equalizer." Our rule does not, and cannot, seek to counteract the same human differences that exist in every other field of endeavor or occupation, namely diligence, intelligence, perception, quickness, alertness, purchasing power or good luck.

Yet, I for one am somewhat concerned about the tendency of our law to work through inexorable logical deduction from Cady, Roberts to a concept of flat egalitarianism. It is

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3/ 44 S.E.C. 633 (1971).

4/ SEC Docket, No. 18, p. 21 (May 25, 1973).

very easy to find lawyers who can construct a series of impressive syllogisms to justify an absurd result. A number of courts have shown themselves quite capable of this exercise as well. The life of the law is not logic, however, but experience. And the unfortunate possibility is that the salutary purposes of Rule 10b-5 will be distorted, and possibly subverted, in the long run if the Commission's injunction -- that simply knowing what the other fellow does not, cannot, and should not, in and of itself, create 10b-5 liability -- is ignored.

As Judge Waterman noted in the Texas Gulf Sulphur case: 5/

> "An insider is not, of course, always foreclosed from investing in his own company merely because he may be more familiar with company operations than are outside investors. An insider's duty to disclose information or his duty to abstain from dealing in his company's securities arises only in 'those situations which are essentially extraordinary in nature and which are reasonably certain to have a substantial effect on the market price of the security if [the extraordinary situation is] disclosed.' * * *
>
> "Nor is an insider obligated to confer upon outside investors the benefit of his superior financial or other expert analysis by disclosing his educated guesses or predictions."

5/ Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F. 2d 833, 848 (C.A. 2, 1968), certiorari denied, 394 U.S. 976 (1969).

Perfect equality in information and judgment are not even desirable goals. Once judgment and analysis become standardized, the diversity of viewpoints that insure market liquidity also will be lost. And, even if this were desirable, it's a hopelessly unattainable goal.

I suppose there is nothing wrong, necessarily, with seeking unattainable goals. We all do this to some extent and the law, after all, is predicated upon the unattainable goal of perfect justice. But, particularly in the case of Rule 10b-5, pursuing this unattainable goal may be more than harmless frolic, it may be disastrous.

After all, the essential functions of 10b-5 are fairness to individuals and the maintenance and restoration of confidence in the fairness of our securities markets. Fairness in this context certainly does not require equality. But, if lawyers and the courts pursue a concept of equality as the goal 10b-5 should ultimately effect, the likely result will be a society in which corporations are afraid to act or speak and larger investors are afraid to trade.

Our goal should be to strike a workable balance between fairness and practicality, and to encourage industry, diligence and quality in financial research and analysis. Accomplishing this task is one of the most difficult problems we face today. Ironically, the more cases there are under Rule 10b-5, the greater the confusion about the scope and

application of the rule. I think the outlines prepared for this seminar bear this out.

For example, a number of circuit courts have opined that scienter is an integral element of any 10b-5 case; [6/] a number have said it isn't; [7/] at least one has said scienter is irrelevant; [8/] and others have said

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6/ See, e.g., Clegg v. Conk, 507 F. 2d 1351, 1361 (C.A. 10, 1974); Zabriski v. Lewis 507 F. 2d 546, 554 (C.A. 10, 1974); Vohs v. Dickson, 495 F. 2d 607, 622 (C.A. 5, 1974); Securities and Exchange Commission v. Coffey, 493 F. 2d 1304, 1314-1316 (C.A. 6, 1974) certiorari denied, 95 S. Ct. 826 (1975). See also Lanza v. Drexel & Co., 479 F. 2d 1277, 1304-1305 (C.A. 2, 1973); Fischman v. Raytheon Mfg. Co., 188 F. 2d 783-787 (C.A. 2, 1951).

7/ See, e.g., Tomera v. Galt, [Current] CCH Fed. Sec. L. Rep. ¶94,975, at 97,369-70 (C.A. 7, Feb. 5,1975); City National Bank v. Vanderboom, 422 F. 2d 221, 229-230 (C.A. 8) certiorari denied, 399 U.S. 905 (1970); Myzel v. Fields, 386 F. 2d 718, 734-735 (C.A. 8, 1957). See also Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F. 2d 833, 854-855 (C.A. 2, 1968), certiorari denied, 394 U.S. 976 (1969).

8/ White v. Abrams, 495 F. 2d 724, 734-735 (C.A. 9, 1974). Accord, Marx v. Computer Sciences Corp., 507 F. 2d 485, (C.A. 9, 1974).

scienter is not a necessary element in an action brought by the Commission. 9/ The Birnbaum 10/ line of cases -- both on corporate mismanagement and on standing to sue -- are equally confused.

SEC guidelines are one possible means of providing more certainty and clarity in this area of the law, but Commission guidelines may not provide the best solution to this problem and may, in fact, cause more confusion and uncertainty than presently exists.

9/ See, e.g., Securities and Exchange Commission v. Dolnick, 501 F. 2d 1279, 1284 (C.A. 7, 1974); Securities and Exchange Commission v. Spectrum, Ltd., 489 F. 2d 535, 541 (C.A. 2, 1973); Securities and Exchange Commission v. Manor Nursing Centers, Inc., 458 F. 2d 1082, 1096 (C.A. 2, 1972).

10/ Birnbaum v. Newport Steel Corp., 193 F. 2d 461 (C.A. 2), certiorari denied, 343 U.S. 956 (1952).

I can't help wondering what the Commission may have had in mind when it first suggested its 10b-5 guidelines project. If the courts find it exceedingly difficult to decide whether or not a fraud perpetrated by all of a company's directors is actionable as deception, under Rule 10b-5, 11/ or when the same court says an aborted tender offeror can sue this month, but not the next, 12/ all on specific facts, I am not sure I see how the Commission can do much better dealing with hypotheticals and non-existent facts. The Commission formally abandoned its guidelines project on directors' liability and many people, including many of us at the Commission, wonder whether the insiders' guidelines project is headed for the same fate.

11/ Compare Schoenbaum v. Firstbrook, 405 F. 2d 200, on rehearing (en banc), 405 F. 2d 215 (C.A. 2, 1968), certiorari denied, 395 U.S. 906 (1969) with O'Neill v. Maytag, 339 F. 2d 764 (C.A. 2, 1964).

12/ Compare Crane Co. v. Westinghouse Air Brake Co., 419 F. 2d 787 (C.A. 2, 1969), certiorari denied 400 U.S. 822 (1970) with Iroquois Industries, Inc. v. Syracuse China Corp., 417 F. 2d 963 (C.A. 2, 1969), certiorari denied, 399 U.S. 909 (1970).

Initially, our project on the use and misuse of material, nonpublic information was conceived of as a magnificent treatise, something that surely would rival Lou Loss's classic work. 13/ After about a year, and the marked and noisy absence of any product, however, we lowered our sights and determined to try our hand -- initially at least -- at a less formidable project; a shorter release devoted less to the history and development of Rule 10b-5 and more to a nuts and bolts discussion of the need for morality and so on.

After another six months went by, the silence seemed to grow even louder. This past fall, therefore, we waited until Al Sommer was once again away from the office for a day or so, and thus unable to defend himself, and then the rest of us elected him to undertake the task of overseeing and directing the preparation of an even more limited release, covering a narrower segment of this broad subject.

Our goal was, and still is, to complete this limited portion of our project, and if we are successful, to continue on from there.

Al originally had been the one to suggest that we abandon our detailed treatise approach and attempt something along the lines of the Commission's 1957 "gun-jumping" release 14/

13/ L. Loss, Securities Regulation (2d ed. 1961).

14/ SEC Securities Act Release No. 3844 (October 8, 1957).

a presentation of a series of specific, factual questions and answers, based on actual and hypothetical cases, with a discussion of the reasoning applied in reaching each of our conclusions.

In his absence, and particularly in light of our gratitude to him for assuming a personal interest in the project, the rest of us agreed to try this approach. A "firm" deadline of January, 1975, for a draft to the Commission was agreed upon, and I, along with others, eagerly awaited the draft with blue pencils close at hand. By using hypothetical "questions and answers," as our approach, we were hopeful that persons faced with analogous situations would be in a better position to resolve their problems. But that January deadline has come and gone, and the point on my blue pencil is still sharp.

There is still a substantial question whether anyone actually will benefit from SEC guidelines. When I formally announced the abandonment of the Commission's corporate directors' guidelines project, to an audience comprised largely of corporate executives, the news was received with great applause. Guidelines may provide some certainty where people are now perplexed, but the cost of that certainty may be pretty high.

In any event, we have prepared an outline defining the scope of our new, less ambitious, 10b-5 guidelines project. We decided that our first inside information release, if and when it is produced, would be limited to a discussion of the problems likely to be faced by broker-dealers and professional financial analysts, in the conduct of their day-to-day affairs. Such persons, and particularly analysts, by the very nature of their professional duties, are continually seeking information from and about issuers of publicly-held securities. Thus, they, more so than other persons, are likely to be faced with difficult questions concerning the legal implications of using information which they obtain from various sources, and make a case for needing guidance.

This seemed like the logical place to start for other reasons, as well. Our involvement in Texas Gulf Sulphur prompted some persons to assume that we were out to muzzle corporate management and cut off the flow of corporate news. Our subsequent salvos in the Investors Management, [15/] Faberge and Avis [16/] cases did not allay these fears.

15/ Investors Management Co., 44 S.E.C. 633 (1971); Faberge, Inc., 1 SEC Docket, No. 18, p. 21 (May 25 1973); Securities and Exchange Commission v. Avis, Inc., 74 Civ. 1065 (S.D.N.Y., March 21, 1975), and see SEC Lit Rel. No. 6797 (Mar. 24, 1975), 6 SEC Docket, No. 13, p. 534 (April 8, 1975).

I don't think that we have any reason to apologize for those cases. They involved what to us seemed like startling breaches of duty, and that is why we pursued them. In fact, the materiality of the information in those cases -- extraordinary and price sensitive information -- was higher than the courts have held necessary.

Nevertheless, the Commission does not wish to discourage analysts from talking to issuers and vice versa, since it is abundantly clear, at least to us, that the information-gathering and dissemination functions performed by professional financial analysts are essential elements of our nation's capital-raising mechanism, and are extremely beneficial to the investing public. On the other hand, we do want to discourage issuers from disclosing, and analysts from seeking and using, material, nonpublic corporate information. Notwithstanding our seemingly never-ending stream of cases, one can grow callous, at times, by reviewing some of the flagrant abuses our Enforcement Division keeps turning up.

This has been a particularly troublesome theme in a number of the cases we recently have brought and, in some instances, settled. Corporate officers, eager to promote their company and the trading markets for its stock, perhaps even optimistic that our capital markets once again will become receptive to equity offerings, have taken to talking to analysts privately.

There need be nothing wrong with this, and we have not yet gone so far as to say it is per se unlawful, although the results of such meetings may be. Sometimes, the company's officers are careless and let certain tidbits of information slip out. At other times, however, they are just insensitive to their fiduciary positions and their obligations under the federal securities laws, and particularly Rule 10b-5, and they seek out certain analysts they wish to cultivate, and disseminate to those analysts material, nonpublic corporate information.

In such instances, of course, we have no alternative but to sue the management personnel and the companies involved, in order to reinforce our view that this is not the way new information ought to reach our securities markets. Selective disclosure of information, where the largest investors and the more savvy analysts always know when to bail out or buy in, has done more to engender disaffection with our system than almost anything else, save the economic malaise which has produced a radical drop in the market price of most companies' stock.

It hardly seems necessary to remind corporate officers not to divulge nonpublic information on a selective basis, but then, there are those cases that keep cropping up. There really isn't much we can say, however, about selective disclosure of material, nonpublic corporate information after we've said it is bad.

What can our guidelines add to this area? The publicity may be good, but something more substantive should be accomplished by our project. If guidelines are to be helpful at all, they must provide answers to some unresolved questions, such as:

-- Is anyone who acquires material, nonpublic information with respect to a company thereby precluded from using that information in connection with the purchase or sale of the company's securities?

-- Is material, nonpublic information learned from customers, suppliers or competitors of a company "inside" information? Does it matter how the information was obtained?

-- Is so-called "market information" material, nonpublic information about a company or its securities? Suppose one learns in advance that some market commentator shortly will publish a recommendation about the company?

-- When do the inquiries and research of analysts result in material, nonpublic information about a company which an analyst is precluded from using by virtue of Rule 10b-5? Must the analyst obtain one

piece of specific material, nonpublic information in order for the prohibitions of Rule 10b-5 to apply? Is an analyst permitted to use material, nonpublic information he has obtained by piecing together bits of non-material, public and nonpublic information about the company? Do the sources of the information pieced together by the analyst matter?

-- What constitutes effective dissemination of material information to the public -- filings with the SEC or other governmental agencies; releases to all major financial publications and wire services; telephone calls to exchanges, NASDAQ, or principal market makers; letters to all existing shareholders? What if the news media do not publicize the information -- perhaps because the issuer is a small or medium-sized company?

-- When do a company and its insiders have an affirmative duty of disclosure rather than merely a duty not to trade on the basis of material, nonpublic information about the company?

-- Does a company have an affirmative obligation to disclose material, nonpublic information in order

to correct, affirm or deny rumors or written statements about the company circulating in the marketplace, even where the rumors or information originated from a source outside the company?

-- When is information about a company deemed to be generally available to the public? Do corporate insiders or other persons who receive nonpublic, material information about a company have an obligation to wait until the public has time to "digest" the news before they trade on the basis of that information? If so, how long?

You all come to these programs to learn something, though perhaps not too much at lunch. No doubt Mike Eisenberg, Art Matthews and others were hoping for a dramatic announcement of the publication of guidelines at this time. But all I can leave you with, in fact, is the knowledge that we are still aware and concerned and trying. And now you have a new number to call with your complaints and great thoughts. Don't call me, call Al Sommer. More seriously, I still retain some hope that the efforts of the staff people working with him can and will bear useful fruit before too much longer.

BASIC REPORT

F&S

FAULKNER, DAWKINS & SULLIVAN

NEW YORK
LAUSANNE

July 14, 1971

BAUSCH & LOMB, INC.

(BOL--NYSE)

Recent Price:	$125	Dividend:	$0.80
Price Range 1970:	$80--$27	Yield:	0.6%
Price Range 1971:	$147--$46	P.E.R. Range 1970:	52.3X--17.6X
E.P.S. 1969:	$1.85	P.E.R. Range 1971E:	63.9X--20.0X
E.P.S. 1970:	$1.53	P.E.R. 1971E:	54.3X
E.P.S. 1971E:	$2.30	P.E.R. 1972E:	20.8X
E.P.S. 1972E:	$6.00		

Capitalization *(a)*

	Amount	% of Total
Long--Term Debt	$16,434,000	18.7%
4% Preferred	5,000,000	5.7
Common Stock *(b)*	66,298,000	75.6
	$87,732,000	100.0%

(a) At December 31, 1970.

(b) Excludes insignificant amount of Class B stock, capitalized at $2,000; consists of 2,560,815 shares of common stock.

Summary and Conclusion

Bausch & Lomb, one of the oldest and strongest names in the American optical industry, now stands on the threshold of one of the most important developments in its corporate life -- the introduction of the soft contact lenses. These lenses, made from materials sub--licensed under patents originating from work done in Czechoslavakia, are now being gradually introduced to professionals across the country.

We believe that the soft lenses, tradenamed Soflens, constitute a significant advance over the traditional hard contact lenses due mainly to a high degree of comfort obtained with the lens even in the initial wearing stages, as well as a closer fit with the eye, reducing the possibility of losing the lens or of having dirt particles lodge under the lens. In addition, and obviously most important, the lenses provide excellent vision correction -- fully satisfactory in the substantial majority of patients.

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DEFENDANT'S EXHIBIT
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We believe that the lenses are unique and that the market will be relatively uncrowded for some time. Among the significant bars to competition are the following: (i) the lens is covered by both product and process patents; these patents may not guarantee the total absence of competition, but, on the other hand, as the patents are enforced we believe that they will at least hinder the development of alternate products; (ii) B&L has made a number of improvements in both the lens itself and in the manufacturing process; (iii) the lenses have been judged to fall under the Food and Drug Act and, as such, require elaborate premarketing testing procedures and ultimately governmental approval; passage through this process took B&L more than four years and (iv) the name and reputation of Bausch & Lomb -- both at the consumer and professional levels -- will support a preference for B&L's products even in a strongly competitive market.

In any case, we believe that demand for B&L's lenses will build rapidly. In addition to the lenses, B&L will also sell sterilizers and insurance relating to the lenses. We believe that B&L will sell more than 100,000 pairs of lenses (at $65 per pair) in 1971, a portion of which will represent inventory pipelining of trade channels, 500,000 pairs in 1972 and 1.4 million pairs in 1973. On this sales rate, we believe that B&L, after splitting the pretax earnings on the lenses 50%--50% with National Patent Development (the licensee of the Czech patents), could make $1.50 per share in 1971 and $4.65 per share in 1972 from the lenses. For the time being, however, in view of the numerous uncertainties relating to a program of such magnitude now only in the start--up stages, we are including in our earnings estimates for 1971 and 1972 only $0.70 and $4.00 per share, respectively, from the Soflens products.

B&L's present business divides essentially into two broad areas: ophthalmic products and optical goods. In the ophthalmic area, B&L occupies the second largest share of the market (behind the American Optical Division of Warner--Lambert). B&L's ophthalmic business has grown steadily in recent years and, over the next few years, should grow at a rate approaching 10% per year. In optical goods, B&L is a factor in a number of instrument markets, including microscopes, spectrophotometers, medical instruments and assorted optically--based precision products. Sales of these products have been generally sluggish in recent years, reflecting the reduced federal support for research and development as well as the cool economic environment. We believe that these repressive factors are lifting; specifically, federal support for research work is now expanding and the economy appears to be moving higher. Accordingly, this area of B&L's business is likely to recover significantly over the next 12--24 months.

B&L's stock has traded at a furious pace since March 1971, the date of the FDA's approval of the Soflens, with the company's capitalization almost turning over twice. The trading range has been exceptionally wide -- the May high was almost three times the March low. The market is clearly having a great deal of difficulty in assessing B&L at this time, not only due to the problems of selecting a proper multiple for B&L -- even assuming that the Soflens will eventually be a successful product -- but also because the entire situation is charged with emotion and rumor. We believe, through all of this, that the Soflens will create a major new market for B&L and that its contribution to earnings will be substantial. Further, we believe that B&L's existing business is now beginning to move back uphill, following more than a year of deteriorating trends. Thus, even

excluding the Soflens development, we believe that the market would be paying $50–$60 for B&L. In view of the unusual potential in the soft lenses, likely to be controlled (for vision correction purposes) by a single company for some time, we believe that a market price of $70–$80 is a fully justifiable valuation at this time. In fact, as the lens moves into broad use and, as we believe it will, establishes itself as the standard product in the field, we would expect B&L to command a multiple of 30–40 times earnings. On the 1972 projection of $6.00 per share, this translates into a share price of $180–$240. On this basis, we recommend purchase of B&L as a participation in potentially one of most exciting medical markets of the 1970's.

Business

B&L's business is derived from essentially three distinct areas, as the following table shows (sales in millions):

	1966	1967	1968	1969	1970
Ophthalmic	$ 52	$ 54	$ 56	$ 62	$ 64
Consumer	10	10	12	12	12
Scientific	54	56	55	59	58
Total	$116	$120	$123	$133	$134

As indicated, sales of the ophthalmic line have trended moderatedly higher in recent years, although scientific instrument shipments have been relatively weak. These operations are discussed in detail in later sections of this report.

Operating Record

B&L's operations over the past ten years have been divided into two distinct periods.

In the 1961–66 period, sales increased at a compound rate of 9.6%, while earnings more than tripled, increasing at a compound rate of 20.5%. This was caused by essentially three factors: (i) rapid growth of ophthalmic products, led primarily by B&L's increasing penetration of the market for both lenses and frames, (ii) sharp increases in sales of scientific instruments, accompanied by close control over costs and expanding margins, (iii) a generally moderate capital expansion program, with the attendant low costs of financing a program of that magnitude and the relative absence of plant start–up costs.

Beginning in 1967, B&L's operations developed an increasingly poor tone. This stemmed from a number of factors, but by far the most important of these was the sharp deterioration in margins in the scientific instrument operations. We estimate that the decline in earnings from this division cost B&L about $0.50 per share after taxes in the 1966–70 period. Further, earnings in the ophthalmic operation were impacted by the

heavy expenses attendant to the Soflens program, amounting to probably $3.0 million, essentially all of which was spent in the 1967–70 period. If these charges were spread equally over these four years, after tax earnings were impeded by an average of $0.15 per year. In addition, interest costs in 1970 were more than two and a half times those in 1966, caused mainly by a far heavier capital spending program. These incremental interest charges cost the company $0.32 per share.

Behind all of these factors, however, B&L probably lost share of the ophthalmic market to its major competitor, American Optical, in the post–1966 period. This was caused to some extent by AO's more aggressive stance following its acquisition by Warner–Lambert in 1967, but also perhaps by B&L's concern with its scientific instrument division which drained an increasing amount of management's time and money.

The following table shows B&L's operating record since 1961:

	Net Sales (000)	Pretax Earnings (000)	Margins	Tax Rate	Net Income (000)	E.P.S.	Price Range	P.E.R. Range
1961	$ 73,333	$ 4,110	5.6%	51.7%	$1,987	$0.91	$24–$18	26.4X–19.8X
1962	75,759	4,267	5.6	52.7	2,020	0.92	19– 11	20.7X–12.0X
1963	79,118	4,270	5.4	50.2	2,127	0.98	19– 13	19.4X–13.3X
1964	87,538	6,391	7.3	47.7	3,343	1.59	24– 17	15.1X–10.7X
1965	96,624	8,325	8.6	47.1	4,406	1.84	35– 21	19.0X–11.4X
1966	115,907	11,272	9.7	46.4	6,046	2.30	62– 32	27.0X–13.9X
1967	119,956	7,422	6.2	46.6	3,965	1.48	82– 55	55.4X–37.2X
1968	122,946	8,262	6.7	46.6	4,412	1.63	75– 43	46.0X–26.4X
1969	132,836	9,646	7.3	47.7	5,046	1.85	82– 51	44.3X–27.6X
1970	134,133	7,596	5.7	44.1	4,246	1.53	80– 27	52.3X–17.6X

Quarterly Operations and Outlook

B&L's quarterly operating record is presented in the following table:

	Net Sales (000)	Pretax Income (000)	Margins	Tax Rate	Net Income (000)	E.P.S.
3/31/68	$30,359	$2,332	7.7%	51.9%	$1,122	$0.42
6/30/68	31,430	2,525	8.0	52.7	1,195	0.44
9/30/68	29,739	2,213	7.4	47.9	1,153	0.42
12/31/68	30,657	1,172	3.8	20.5	932	0.35
3/31/69	32,216	2,601	8.1	51.3	1,266	0.47
6/30/69	34,608	2,795	8.1	49.7	1,405	0.51
9/30/69	32,424	2,545	7.8	47.7	1,330	0.49
12/31/69	33,587	1,705	5.1	38.7	1,045	0.38
3/31/70	31,564	2,043	6.5	50.7	1,008	0.36
6/30/70	35,181	2,177	6.2	45.9	1,177	0.43
9/30/70	33,400	1,881	5.6	42.8	1,076	0.39
12/31/70	33,987	1,574	4.6	37.4	984	0.35
3/31/71	31,028	—	—	—	760	0.27

As the table shows, B&L's operations have been sluggish for the past five quarters. This has reflected a number of factors, the most important of which include the following:

- Costs related to the Soflens program have been substantial and, in 1970, probably amounted to $1.0 million or so, all of which was expensed against income. This excludes B&L's payment to NPD of $300,000 in 1970 and at least $300,000 in 1971 under the terms of the minimum royalty agreement, none of which was expensed. However, the direct costs of the Soflens program -- $1.0 million in 1970 -- cost about $0.20 per share after taxes. Further, the opportunity costs associated with management's substantial attention to the Soflens program have been high but are not directly measurable.

- Sales of scientific instruments in the U.S. market fell 10% due mainly to soft demand conditions throughout the industry. Earnings from this operation in 1970 were probably no more than $0.20 per share, down sharply from an estimated $0.40 per share in 1969.

- Interest expenses rose 34% with the year-to-year difference in interest costs penalizing earnings by $0.14 per share after taxes.

These problems continued into the first quarter in 1971 when sales were down 1.7% while net income fell 24.6%. Ophthalmic products trended modestly higher and scientific product sales continued to drift lower.

In the second quarter of 1971, we do not expect any substantial change in B&L's traditional business. Second quarter earnings will probably remain only even with those of last year.

Over the last half of 1971, B&L's ophthalmic business should begin to gain momentum, particularly if the present economic recovery accelerates and pumps more funds into consumers' hands. The scientific instrument part of the business could begin to turn the corner by the second half, led by the ARL line of spectroscopic products. On a tentative basis, the earnings growth in this division (domestic only) during the second half of 1971 could be as much as 100% over the depressed base last year.

Most importantly, the pipelining of the Soflens kits will play a critical role in B&L's last half. On a tentative basis, we believe that B&L will be able to sell a kit to 20% of the nation's fitters in the second half of 1971, leading to sales of $10.5 million. Expenses on generating these sales will be relatively high, but we believe that B&L will begin to draw earnings from the Soflens program into its results. On this type of pipelining program, B&L's earnings could be enhanced by as much as $1.50 per share. We believe that unusual and largely non-recurring expenses will reduce this to about $0.70 per share. Still B&L's total earnings in 1971 could present the following picture:

	Estimated 1970 Full Year	First Half	Second Half	Estimated 1971 Full Year
Ophthalmic	$0.75	$0.32	$0.45	$0.77
Scientific	0.19	0.05	0.20	0.25
Consumer	0.09	0.03	0.07	0.10
Foreign	0.51	0.25	0.25	0.50
Soflens	—	0.05	0.65	0.70
Total	$1.53	$0.70	$1.62	$2.32

In 1972, B&L will experience substantial strength in the traditional parts of its business, led mainly by the scientific instrument operations. This will be supplemented by earnings from the Soflens program which will consist of (i) further pipelining and (ii) sales to those fitters pipelined in 1971 who will then be fitting patients and reordering from B&L.

As the demand increases (towards 500,000 pairs) a larger number of practitioners will be drawn into the market, if for no other reason than simply to protect position as a contact lens fitter. In short, it will become increasingly difficult to remain absent from the market as and if lens demand builds up.

We believe that 500,000 pairs of lenses will be sold to consumers during 1972. On this sales level -- of 500,000 pairs -- B&L would generate earnings of about $3.65 per share from sales of the Soflens (see table on page 22 for a discussion of this calculation, from which we have deleted the $1.7 million R&D rebate which will potentially be paid fully in 1971).

In addition, sales of sterilizers will be a further increment, possibly on the order of $1.00 per share.

The following table shows our estimates of B&L's per share earnings picture in 1972 if the Soflens program produces profits on the order of our above projections and if the core of its business performs as expected:

	1971	1972
Ophthalmic	$0.77	$0.85
Scientific	0.25	0.50
Consumer	0.10	0.12
Foreign	0.50	0.60
Soflens	0.70	4.65
Total	$2.32	$6.72

It should be recognized that a number of factors could be overstated in the above forecasts, the sum of which could lead to an overstatement of earnings by as much as 20%. Among these are the following: (i) Scientific instruments earnings may not snap back as rapidly as we now believe; this would be caused by continued sluggish demand as well as the reluctance of the company to dismantle programs now in the development stage prior to a final reading on the likelihood of their success; (ii) The Soflens program could achieve only a somewhat more modest sales rate; (iii) The number of shares outstanding in 1972 could increase by as much as 160,000 due to a contemplated offering of equity--type securities (see Finances); this would dilute the $6.72 down to about $6.30 per share, excluding the effects of paying down debt from the proceeds of the offering.

In view of these (and other) uncertainties, we are carrying an earnings forecast in 1972 somewhat below the constructed estimate. Specifically, we are reducing the $6.72 by 11% to $6.00. As B&L's experience with the Soflens widens and if it corroborates our tentative findings at this early date, we will adjust our earnings estimates accordingly.

Ophthalmic

B&L is the nation's second largest producer of ophthalmic products, ranking behind the American Optical Division of Warner–Lambert. See our discussion of the "Ophthalmic Industry" for our interpretation of overall industry trends.

B&L has experienced reasonably satisfactory growth from this market, although we believe that it has lost share to American Optical over the last two or three years. The market for frames and lenses increased at 6.4% and 14.3%, respectively, in the 1963–70 period; this pattern of growth probably slowed somewhat in the 1967–1970 period. However, gains were relatively better maintained in frames than in lenses, reflecting a trend towards higher priced products, stimulated by a greater emphasis on the fashion aspect of eyeglasses.

B&L has taken a number of steps to consolidate and improve its position in the ophthalmic industry. These have included (i) the purchase of additional prescription laboratories through the Reese Optical acquisition in 1969 (sales of $3.7 million in 1968); (ii) the construction of a major new facility in Maryland, completed this year -- the Maryland plant will relieve the strains on the company's capacity which have been evident over the recent past; (iii) the promotion of a line of plastic prescription lenses which now, in conjunction with heat–treated glass, fulfill the FDA's order to use only impact–resistant materials in eyeglass lenses; and (iv) the introduction of a number of new products to the ophthalmological examination equipment line.

These factors should support B&L's position within the ophthalmic field over the next few years. Furthermore, and probably more importantly, we believe that eyeglass sales have been restrained by the poor economy. As the economy turns upward, and particularly as the consumer becomes more interested in discretionary medical spending, B&L should experience a strong surge in its ophthalmic business. The leverage in this operation is believed to be substantial and, on a 10% sales move, we estimate that earnings could increase by 25% or so.

Consumer

B&L occupies a strong position in a number of consumer goods areas, including sunglasses, readers and magnifiers, binoculars and telescopes, and rifle sights. Sales of these products have trended moderately higher in recent years, almost solely due to good growth in sunglass shipments. Some slowdown developed in 1970, but business here should speed up as the economy improves.

Scientific Instruments

B&L's scientific business consists of a number of distinct product lines, each with different marketing groups and competitive circumstances. In 1967, B&L responded to these clear differences and split the instrument activities into four separate organizations, three of which were product oriented and the fourth consisting of a basic manufacturing service. In addition, a subsidiary operation, Applied Research Laboratories (ARL), is managed separately.

B&L produces a complete line of microscopes and microprojectors, used both in schools for instructional purposes and in industry as an adjunct to the production process in many miniaturized applications (mainly in the electronics industry). Sales of microscopes have been seriously affected by (i) foreign competition, particularly from Japan, (ii) the industrial slowdown which has hurt a number of major customer groups for the B&L product line, and (iii) the cooler environment in hospitals and other health care organizations, to which a sizable piece of business is directed. No real turn is yet evident in this phase of the company's operations but, as 1971 and 1972 unfold, we expect some improvement from current levels.

B&L occupies a strong competitive position in spectrophotometers, colorimeters and optical gratings sold to other producers of spectrophotometric products. B&L's position here is strongest in the lower end of the price scale, mainly with the Spectronic 20, priced at $500, which is the most widely used spectrophotometer in the industry. B&L is also reasonably important in the higher priced end of the spectrum, although Perkin-Elmer and others play a more dominant role in this end of the industry. B&L is now importing and distributing a line of high priced spectrophotometers with infra-red measuring capabilities (from Shimadzu of Japan) to compete more effectively in the higher priced end.

Sales of these products are directed mainly to medical research and academic organizations. Spending levels of these organizations have been suppressed since approximately 1968 by a general slowdown in federal support for research. We believe that this situation is in the process of being changed (see FD&S's recent reports on Beckman Instruments and Tektronix) and, as it does, it should aid B&L's business substantially. Incremental margins on this business should be excellent, particularly from the presently depressed base.

In addition, B&L has been mounting an effort in the medical instrument field for the past five years or so. Products available here have been the Zymat, introduced in 1967, which automatically analyzes blood samples for enzyme content; the Spectrophor, introduced in 1965 into the electrophoresis area; the Spectronic 400, a general purpose, multi-channel blood chemistry analyzer directed to the hospital market; and two smaller spectrochemical blood analysis models. This effort has been generally unsuccessful and costly. The drain on profitability at the present time is regarded as being relatively modest.

The Houston Instrument Division, acquired in July 1967, produces a line of precision instrument recorders, used mainly in conjunction with computers to plot graphs. Houston occupies a position in this field well behind Calcomp, but operations are profitable and are in reasonably sound shape.

Applied Research Laboratories, the largest single source of sales and earnings in B&L's scientific instrument business, is the leading factor in the spectroscopy field. Spectroscopy products are used in the high speed qualitative analysis of materials. A number of process industries are among the major customers for ARL's equipment, particularly the copper, steel and aluminum industries. ARL has developed a number of newer qualitative analysis instruments, such as an ion microprobe introduced in 1970, and an x-ray fluorescence system, used in ore processing. Sales and earnings of ARL have been good over the past seven or eight years, continuing through 1970. Some weakness developed in early-1971 but a rapid response to the overall economic recovery is expected.

Apart from these major pieces of instrument business, B&L makes a number of smaller product lines, including lenses used on business machines, including the Xerox system, a line of fiber optics lights (used in the medical, dental and industrial areas), and aerial photography interpretive systems. Many of these products have been slowed by softness in the overall economy.

Foreign

B&L occupies a strong position in many overseas markets, mainly with its line of ophthalmic products although its sales of scientific instruments (particularly spectroscopic products) have increased sharply in recent years, including 1970. Sales and earnings of foreign subsidiaries were consolidated initially in 1967 and since then have shown substantial growth. South American operations were excluded from the income account until 1970 due to unstable economic conditions generally prevailing. Beginning in 1970, these operations were accounted for on an equity basis. The following table shows B&L's consolidated foreign business since 1966:

	Sales	Net Earnings
	(000)	(000)
1966	$14,900	$ 300
1967	18,900	265
1968	20,400	866
1969	26,300	799
1970	31,000	1,492

The company's position is generally important in most European countries and has been supplemented in recent years through a modest program of acquiring prescription laboratories. In addition, ARL occupies a strong stake in Europe in the instrumentation field.

South American operations, after exchange losses have been modestly profitable in recent years. Sales are not consolidated but are probably in excess of $5 million.

Contact Lenses

The analyst is presented with a number of problems in a evaluation of the lens developments, the sum of which may affect the projection of the ultimate market for B&L's Soflens. The investor should be aware of these problems. First, data relating to the size of the market is limited and, to the extent available, tends to be about three or four years old. Secondly, the professions of ophthalmology and optometry appear to be noticeably divided in their evaluation of the market, the products now available and the soft lens products. Thirdly, the clinical literature relating to the B&L lens, as well as the silicone lenses, is small; the literature surrounding the Griffen lens is more substantial, particularly in the therapeutic area, but suffers from certain other defects. Nevertheless, with these difficulties in view, the following sections discuss the lens from the standpoints which, in our opinion, are critical for an evaluation of their success.

The License: In 1966, B&L negotiated a contract with National Patent Development Corp. (NPD), providing for B&L to receive a sublicense from NPD for the manufacture and sale of contact lenses made from a hydrophilic acrylic-based polymer. This sublicense gives B&L rights in the Western Hemisphere, Israel and the Republic of South Africa.

NPD is the exclusive licensee of the Czechoslavak Academy of Science, which holds the worldwide patents on the acrylic polymer from which a number of products in development, including the lenses, are made. NPD is the licensee in the areas included in the present agreement with B&L, as well as in Western Europe, Japan, Australia, South Korea, Taiwan, the Philippines, and certain smaller Asian countries. The B&L sublicense from NPD expires in 1983.

Terms of the contract between B&L and NPD are complex. In brief, they call for NPD to issue to B&L all rights for the manufacture and sale, in the specified areas, of the acrylic-based hydrophilic polymer for contact lenses. NPD has secured more than 30 patents in the U.S. relating to the hydrophilic material itself, including various production processes used to handle the polymer and a number of different end uses. Of the 30 patents in the network surrounding the NPD products, 11 of these relate to the contact lens use. All of these patents are available to B&L. NPD believes that these patents are unique based on a number of factors including (i) an extensive search conducted during the negotiations with the Czechs, (ii) the fact that a number of major companies, including B&L have conducted comparable searches prior to executing agreements with NPD, and (iii) the fact that chemists, prior to the Czechs, had been unable to incorporate a water-retention ability into longchain polymers. The polymer resembles, in fact, a sponge and exchanges water readily with its surroundings.

Subsequently, a number of other polymers have been produced which also have hydrophilic properties but which handle the construction of the molecule differently. Griffen Laboratories (recently acquired by Frigitronics Corp.), for example, is producing a polymer which handles the molecule differently (believed to be a grafting approach) than the NPD—B&L polymer. The addition of these different approaches may, but only may, change the nature of the lens, making it somewhat less desirable for use as a contact lens for vision correction purposes. (On the other hand, it may actually improve its performance as a contact lens for therapeutic purposes.) In any case, it is clearly in the best interests of both NPD and B&L to enforce the patents and, if possible, to insulate the field from competition. Reasonable men can differ, at the present time, as to whether this will be possible. However, if NPD sues Griffen (or any other acrylic—type soft lens producer) and if Griffen wins, the penalties to NPD are unclear. It is entirely conceivable, for example, that B&L would attempt to modify the agreement with NPD. We are not able to forecast in any way the degree of success which B&L may eventually enjoy in this effort. On the other hand, if NPD wins, B&L would be able to exploit the market relatively unencumbered by competition. It should be recognized that no suits are presently pending between NPD and any other contact lens producer.

In return for the use of the license, (i) B&L agreed to pay the minimum annual royalty in 1968 and 1969 due to the Czech Academy, amounting to $100,000, and $100,000 of the minimum royalty in both 1970 and 1971 -- a total of $400,000 for the four years, (ii) B&L also agreed to make other payments to the Czechs on behalf of NPD, and (iii) B&L agreed to share, on a 50%—50% basis, the pretax earnings as defined derived from the sale of the lenses. This latter point is discussed further in a subsequent section, titled "Profit Projections".

Lens Characteristics: The B&L lens -- the Soflens -- differs from existing contact lenses mainly in its ability to absorb water and thereby become soft and supple.

Existing contact lenses, known as "hard shell" lenses, are made from methyl methacrylate polymers (produced mainly by Rohm & Haas, under the Plexiglas tradename, and DuPont, under the Lucite tradename). These lenses are hard and provide excellent visual correction but are difficult to become accustomed to, largely due to their stiff nature. Further, the hard lenses in effect float on a layer of tear fluid over the cornea. The fit between the inner surface of the hard lens and the cornea is typically imprecise. As a result, the lens is continually adjusting to movements of the eyeball. Since the fit between the interior of the lens and the surface of the eye is irregular and relatively loose, dirt particles frequently lodge between this space, causing irritation and inflammation. Also as a result of the loose fit, the lens can become dislodged by rapid head and eye movements.

The Soflens, as indicated earlier, becomes soft in the eye due to its ability to absorb water and the other liquid substances which move across the surface of the eye. The Soflens is made in specific powers, adjusting vision by the degree of curve of the outer surface of the lens. The inner suface adapts to both the curvature and the minute irregularities of the cornea. Due to the water absorption quality, the inner surface of the lens fits closely and comfortably with the cornea. Further, the water molecules on the surface of the cornea are incorporated into the hydrogel matrix of the Soflens and, as a result, a close bond is formed with the cornea. The Soflens thus moves exactly in tandem with the cornea, it cannot be dislodged, and there is practically no possibility of grit entering the space between the lens and the cornea.

The following table details a few of the more important characteristics of the Soflens:

	Soflens
Chemistry	Hydroxyethyl methacrylate X–linked by ethylene glycol dimethacrylate, every 200 monomer units.
Diameter	Two sizes: 12.3 mm and 13.3 mm.
Edges	Lens edges are thinner than center, lens centering has not been a problem.
Thickness	Ranges between 0.09 to 0.36 mm.
Radius of Curvature (Base Curve)	Three standard curves
Power	+20D to –20D
Permeability	Poor
Corneal tear layer	Relatively thin
Hydration	38% by weight
Sterilization	10–15 minute exposure to heated saline solution
Flex	Low flex
Handling in dry State	Good
Manufacture	Spin–casting; low cost and highly reproducible
Price	$65 per pair in U.S.
Cosmetic Use	NDA cleared March 18, 1971
Therapeutic Uses	IND now on file; NDA due to be filed shortly
Drug Release Use	Licensed to Alza Corp. but may be available to B&L.
Refraction	Excellent, based on interpretation of clinical data.

The Soflens has been tested in more than 1,000 patients. Results of this testing program stretched over a five-year period and were the raw material for the filing of a New Drug Application at the Food and Drug Administration. After lengthy delays and product modifications, the NDA was approved in March 1971. The results of this program, drawn from the few references to it known to us in the clinical literature, are presented below:

- The Soflens is safe and, in fact, may be safer than the hard shell lens. There is no evidence of damage to the cornea.

- The Soflens is highly comfortable. Close to 40% of the patients installed on the Soflens were unsuccessful hard lens wearers.

- Handling of the lens -- inserting and removing it -- is relatively easy and, unlike the hard lens, may be accomplished without a mirror.

- Sterilization of the lens is accomplished by heating it for 10--15 minutes in a saline solution. B&L will sell or provide a sterilization unit for approximately $21, which automatically shuts off and is generally easy to use. In practice, lenses -- both hard and soft -- are frequently not cared for properly; the penalties of improper care in the Soflens, like the hard lens, are minimal. A number of firms are working to develop sterilizing solutions specifically for the Soflens. We do not believe that heating the lens is a liability; in fact, after the patient becomes accustomed to the use of this procedure it may even be an advantage -- it is easy to use and cheap.

- Data relating to visual acuity of the lens is somewhat less precise. One report covered lenses fitted in mid--1968, a lens which has subsequently been upgraded in terms of quality. Of the 37 patients fitted, 57% were fitted successfully, attaining visual acuity of at least 20/25; close to half the patients reached 20/20 vision. Of the remaining 43%, the majority attained adequate vision but failed for various other reasons. In a broader study, using later lenses, the visual acuity level was 20/20 for 81% of the cases and 20/25 for 96% of the cases.

The Market: The market for contact lenses at present is the sum of the number of people entering the vision correction market for the first time selecting contact lenses initially and the number of people wearing eyeglasses who convert to the use of contact lenses.

The following table shows the total number of people, distributed by age groups, wearing corrective lenses, as of June 1966 (000 omitted):

Age	Persons 3 years and over	No corrective lenses	With corrective lenses — Total	Eyeglasses only	Contact lenses
Total 3 +	178,907	92,693	86,020	84,247	1,773
3–16	55,037	46,652	8,263	8,110	153
17–24	22,393	13,049	9,310	8,474	835
25–44	45,185	26,250	18,914	18,314	599
45 and over	56,292	6,743	49,533	49,348	185
45–54	21,850	4,112	17,732	17,636	97
55–64	16,864	1,337	15,526	15,469	57
65 +	17,578	1,294	16,275	16,244	–

Source: National Center for Health Statistics.

As indicated, the use of corrective lenses increases proportionately with age. Furthermore, the proportion of people wearing contact lenses is centered primarily in the 17–24 age group, where about 10% of all corrective lens wearers used contact lenses, and in the 25–44 group, where 3% (of a far larger group) wore contact lenses.

We estimate that the number of people wearing contact lenses in 1970 reached 3.0 million, somewhat less than double the number four years ago. Although not shown in the above table, the usage rate of contact lenses among females is more than twice as frequent as among males (1,242,000 compared with 530,000). The usage of contact lenses, relative to eyeglasses, is relatively heavy in the Western part of the United States, among people with incomes over $5,000 per year and among white collar workers. These segments of the population are each growing as a percentage of the total. Further, based on Department of Commerce data, as well as trade estimates, we estimate that sales of contact lenses (in pairs) traced the following approximate pattern over the past five years (in millions):

Year	Contact Lenses Sold (in pairs)	Eyeglass Lenses (in pairs)
1965	0.8	36.0
1966	1.0	37.0
1967	1.2	38.0
1968	1.2	44.0
1969	1.3	45.0
1970	1.0	44.0

Sources: Bureau of the Census, Optical Goods Manufacturers Association and FD&S.

The above table includes both new patients -- those purchasing a pair of contact lenses for the first time -- and patients reordering a pair of lenses either due to a change in vision or loss of the initial pair. We estimate that the number of different people who have purchased a pair of contact lenses is now approaching 10.0 million. Of these, we believe that about 3.0 million continue to wear the lenses with a high degree of regularity and 7.0 million people either wear them infrequently or not at all.

The following discussion is directed at the size of the potential total corrective lens market and, within that, the segment likely to be directed towards contact lens.

According to government data, cited earlier, about 42% of all people 17 to 24 years of age wear glasses; similarly, 42% of all people 24 to 44 wear glasses. The onset of vision defects is typically at a relatively early age. The following table shows the age at which each segment of the population first obtained corrective lenses (000 omitted):

		Age when first obtained corrective lenses (a)			
Present Age		Under 17	17–24	25–44	45+
all ages	86,020				
3–16	8,263	8,263			
17–24	9,310	6,533	2,531		
25–44	18,914	6,778	4,654	6,571	
45 +	49,533	4,400	4,021	15,550	22,592

Source: National Center for Health Statistics.

(a) Totals may not add due to small number of people in age categories above age 17 who did not recall when they first obtained correction.

As indicated, of the 86 million people wearing glasses at the date of the census, 30% of these obtained vision correction before the age of 17 and another 13% before the age of 24. The substantial majority of these people were nearsighted, a vision defect well suited to the use of contact lenses. Based on this data, it appears that about one out of seven people under the age of 17 and two out of five people in the 17–24 age category wear some type of corrective lens.

The following table presents the age of the population of the U.S. at the end of 1969 and shows the likely distribution of the population by 1975 and by 1980 (000 omitted):

Year	Total	Under 5	5–14	15–24	25–44	45 +
1969	203,216	17,960	41,345	35,054	47,994	60,863
1975 *(a)*	217,557	19,968	38,565	40,011	53,928	65,086
1980 *(a)*	232,412	23,245	38,104	41,736	62,302	67,024

(a) Assumes fertility rate of 2,775 per 1,000 women of childbearing age (known as Series C in Census projections).

Applying the data relating to the usage rate of corrective lenses to the above population data, a statistical procedure which obviously incurs certain risks, the following estimates are derived for the combined usage rate of eyeglasses and contact lenses (000 omitted):

Estimated Use of Corrective Lenses: 1969–80

Year	Under 15	15–24	25–44	45 +	Total
1969	3,895	16,538	20,157	53,560	99,150
1975	3,780	16,004	22,650	57,276	104,710
1980	9,202	16,694	26,167	58,981	111,044

Source: FD&S, based on government data.

Thus, the total market for corrective lenses, measured in numbers of people, probably grew by 15% in the 1966–69 period and should increase by at least 6% in the 1969–75 period and another 6% in the 1975–80 period. Actual growth will probably be far higher due to increasing income levels, increasing educational attainments, and the relative stability of the age groups 15 to 44, during which time most corrective lenses are bought.

We further assume that contact lens usage has increased modestly as a percentage of all corrective lenses worn over the past four years and, furthermore, that contact lens usage will continue to increase over the next five and ten years. Specifically, we believe the contact lens usage will conform to the following usage rates (in millions):

Year	Contact Lens Sales (pairs)	Contact Lens Wearers	% of All Corrective Lenses
1966	1.0	1.7	2.1%
1969	1.3	2.4	2.4
1975	4.0	7.5	7.2
1980	4.3	13.5	12.2

The following table presents our estimates of contact lens usage by age category in 1969, 1975 and 1980 (000 omitted):

1969 Estimates

Age Group	Eyeglasses	Contact Lenses	Total
Under 15	8,595	200	8,895
15–24	14,638	1,400	16,538
25–44	19,357	600	20,157
Other	53,360	200	53,560
Total	95,950	2,400	99,150

1975 Estimates

Age Group	Eyeglasses	Contact Lenses	Total
Under 15	7,780	1,000	8,780
15–24	12,804	3,200	16,004
25–44	19,850	2,800	22,650
Other	56,776	500	57,276
Total	97,210	7,500	104,710

1980 Estimates

Age Group	Eyeglasses	Contact Lenses	Total
Under 15	7,202	2,000	9,202
15–24	12,494	5,200	16,694
25–44	22,167	5,000	26,167
Other	58,081	1,300	58,981
Total	99,944	13,500	111,044

If these usage levels are achieved, the following table would describe our expectations of (i) existing users in each year, (ii) sales of lenses to new users and (iii) the number of people dropping out of the market due mainly to failure to adapt to the lens (in millions):

Year	Beginning Contact Lens Wearers	New Contact Lens Wearers (a)	Dropouts	Year–End Wearers
1969	2.4	0.7	0.5	2.7
1970	2.7	0.6	0.4	2.9
1971	2.9	0.6	0.5	3.0
1972	3.0	1.0	0.6	3.4
1973	3.4	2.2	0.7	4.9
1974	4.9	3.0	0.8	7.1
1975	7.1	3.0	1.4	8.7
1976	8.7	3.0	1.6	9.1
1977	9.1	3.2	1.7	10.6
1978	10.6	3.3	1.9	12.0
1979	12.0	3.4	2.1	13.3
1980	13.3	3.5	2.2	14.6

Note: This data assumes that 10% of the existing market drops out each year and that 25% of new fittings drop out in the 1969–80 period.

(a) Omits sales for replacement purposes and sales for changes in refraction; includes only new users and counts each as one pair.

It should be recognized that the above assumes that the ratio of users leaving the market will remain relatively constant at 25% in the 1973 to 1980 period. In fact, this may prove to be an excessively high estimate, in view of the likely impact of the soft contact lenses which could reduce or eliminate the level of discomfort experienced with initially wearing lenses. Further, it should also be pointed out that the number of lenses sold is larger than the number of new wearers. This mainly reflects the fact that each new wearer (and a certain portion of existing wearers) undergoes a high loss rate early in his experience with lenses. As a rough estimate, we believe that something on the order of 40% more pairs of lenses are sold each year than new wearers entering the market.

Using this data as a benchmark, we believe that the following discussion is a reasonable summary of the potential for the soft lens. The soft lenses will draw sales from four distinct sources: (i) the conversion of present eyeglass wearers to contact lenses and specifically to soft lenses, (ii) the attraction of new people entering the market for corrective lenses for the first time directly to contact lenses, (iii) the conversion of existing contact lens wearers to the soft lenses and (iv) the attraction of dropouts from the contact lens market back into the market as a result of the availability of soft lenses. In order, these factors could produce the following totals:

(i) As indicated, we believe that 6.0 million people either now wearing eyeglasses or not yet wearing any type of corrective lenses will be converted to contact lenses between 1969 and 1975 and another 5.9 million between 1975 and 1980. Of these, we estimate that the conversion rate to soft lenses will start slowly but build up significantly as the decade proceeds (in millions):

Year	Contact Lens Population	New Hard Shell Lens Wearers	New Soft Lens Wearers	Total New Lens Wearers	Soft As % of Total
1971	2.9	0.5	0.1	0.6	16.7%
1972	3.0	0.5	0.5	1.0	50.0
1973	3.4	0.8	1.4	2.2	63.6
1974	4.9	0.9	2.1	3.0	70.0
1975	7.1	0.8	2.2	3.0	73.3
1976	8.7	0.7	2.3	3.0	76.7
1977	9.1	0.7	2.5	3.2	78.1
1978	10.6	0.6	2.7	3.3	81.8
1979	12.0	0.5	2.9	3.4	85.3
1980	13.3	0.5	3.0	3.5	85.7

The above estimates assume that about 4 million people a year are passing the age of 24, approximately half of whom are wearing some type of corrective lens. Of these, probably half will be attracted to contact lenses, producing a new market of 1 million pairs of contact lenses per year. The balance will be derived from the substantial group of eyeglass wearers attracted to contact lenses for the first time.

(ii) We believe that the conversion of existing contact lens wearers to the soft lenses will probably be relatively minor. The only reasons for switching from a reasonably acceptable product would be either due to the high discomfort associated with dirt and grime lodging under the lens, typically in a city environment, or due to the ability of the wearer to use the soft lens on a less regular schedule, not now available to the hard lens wearer due to the discomfort normally associated with readapting to the lens. The barrier to conversions from hard lenses to soft lenses will be the substantial price of being refitted with soft lenses. We estimate that about 5% per year of the existing hard lens population will be attracted to the soft lens -- or roughly 150,000 pairs per year. This will build up gradually over the next few years.

(iii) We believe that a substantial number of people who had purchased hard lenses and subsequently dropped out of the market will purchase a pair of soft contact lenses.

The primary reasons for not using the pair of hard lenses, even after spending something in the area of $200, is the high degree of difficulty which most people encounter in adapting to the lens. Many people -- probably half -- eventually give up this effort and revert to eyeglasses. However, all of these people were motivated at one time to wear contact lenses and, if the adaptation period is eased -- as it is with the soft lenses -- a significant number may come back to the market. We believe that roughly 5% per year of the dropout population, or about 350,000 people, will be attracted back to the market. This will start slowly but build up across the next four years.

When these estimates are combined, the market for soft lenses could be something approaching 500,000 pairs in 1972, 1.6 million in 1973, 2.4 million in 1974 and 2.6 million in 1975. In the remainder of the decade, 1976--1980, the sales of soft lens will conform more closely to the sales rate indicated on page 20, as the conversion of the dropout population and the conversion of the hard lens wearers becomes less meaningful.

Price: The B&L lenses have been priced initially at $65 per pair. This price compares with a typical price from a hard lens manufacturer of $15--$20 per pair. However, the price to the dispenser is a relatively minor portion of the price of the fitted lens to the patient. It appears that the price of the soft lens to the patient, at least at the outset, will be $300 per pair or so, compared with about $200 for the hard lens. In time, we believe that dispensers -- particularly optometrists who have been losing share of the contact lens market to ophthalmologists in recent years -- will reduce prices to the patient. This will be facilitated by the relative ease with which the soft lens is fitted to the patient, particularly compared to the hard lens, as well as the probability that the time involved in fitting the soft lens will be substantially reduced.

The present price for the Soflens adopted by B&L will, in our opinion, be reduced by perhaps 25% over the next three years. This will largely reflect the probable lower cost structure once B&L enters longer production runs but will also reflect the existence of either real or potential competition.

Pipelining and Reordering: B&L is selling the lenses to the dispenser in a kit containing 72 lenses, each pair costing $65, five sterilizers, each costing $21, a professional sized sterilizer and a film projector. The kit is priced at $2,905. The extent of the initial acceptance of the kits will obviously influence the development of sales from B&L to the dispenser for the next year or so. For example, if 20% of the nation's 18,000 dispensers -- roughly 3,600 dispensers -- order kits during 1971, this would result in sales to B&L of about $10.5 million. However, this would also place about 130,000 pairs of soft contact lenses in the hands of the dispenser and act as a brake to additional sales in subsequent months. The extent of this restraint will depend basically on the relationship of the size of the pipeline to the consumer acceptance rate. For example, 130,000 pairs of lenses is equal to only about three months sales if the market for soft lenses reaches 500,000 pairs per year.

Apart from the pipelining consideration, B&L will be shipping lenses to dispensers as they are sold to the consumer. As the dispenser fits each patient, he will reorder the specific lenses used in the fitting, thus maintaining a relatively complete inventory of most popular sizes. In this way, B&L's sales will eventually reach a close relationship to retail demand, but this relationship will be warped initially by the pipelining.

Profit Potential: Our discussion of the profit potential of the Soflens centers on several critical variables, including the number of lenses sold, the likely cost experience and the terms of the NPD contract.

According to the NPD agreement, B&L is entitled to deduct 35% from the net sales of Soflens as a general payment, unidentified as to its nature. Further, B&L is entitled to recoup all of its research and development costs on the Soflens system as well as all royalty payments made to date, prior to any calculation of earnings. Then B&L will deduct all direct costs associated with the Soflens program, including (i) costs of selling the product, mainly covering the expenses of establishing a sales organization specifically responsible for the Soflens, (ii) establishing a manufacturing capability for the lens and (iii) costs of carrying inventories of the product. Following this, the resultant level of pretax earnings will be split 50%–50% with NPD.

The following income accounts show the earnings potential to B&L of the Soflens program at various levels of acceptance (000 omitted):

Lens	100,000 Pairs	300,000 Pairs	500,000 Pairs	700,000 Pairs	1,000,000 Pairs
Sales	$6,500	$19,500	$32,500	$45,500	$65,000
35% rebate	2,275	6,825	11,375	15,925	22,750
Royalty	390	975	1,625	2,275	3,250
Costs	1,200	3,600	5,000	5,250	7,500
Pretax Income	2,635	8,100	14,500	22,050	31,500
R&D recoup	1,650	1,650	1,650	1,650	1,650
B&L's share *(a)*	5,243	12,525	20,275	28,600	40,151
Sterilizer					
Sales	2,100	6,300	10,500	14,700	21,000
CGS	1,000	3,000	5,000	6,650	10,000
Pretax	1,100	3,300	5,500	8,050	11,000
Total Pretax	6,343	15,825	25,775	36,650	51,151
After–Tax	3,172	7,912	12,888	18,325	25,576
Per Share	$1.24	$3.09	$5.03	$7.16	$9.99

(a) Sum of 50% of pretax income, 35% rebate and the $1,650,000 R&D recoup.

In the above table, we have assumed: (i) a sales price of $65 per pair, (ii) costs of producing the lenses of about $1.50 per pair at 700,000 and 1,000,000 pairs, $2.00 per pair at 500,000 pairs and $3.00 per pair below this, (iii) costs of selling the lenses of $4.00 per pair at 700,000 and 1,000,000 pairs of lenses, $6.00 at 500,000 pairs and $7.00 below this, and (iv) assorted other costs of $2.00 per pair at all production levels. We further assume that B&L has spent about $3.5 million on research and development on the lenses. This has been expensed against earnings in prior years; B&L is now entitled to recoup 50% of these outlays against the pretax profits of the lens program before any distribution to NPD. Finally, we assume that B&L will sell its sterilizer unit, for $21 apiece, to each of the purchasers of the lenses. The profit potential of this unit is treated separately since it is not part of the NPD arrangement.

If, as we believe, prices were to be reduced by 25% over the next three years -- at about a 10% rate per year -- and if the market by 1973 were to be on the order of 1 million pairs of lenses, then the revenue contribution would be deflated to $50 million. The income account in the above table would then be changed to the following:

	1,000,000 Pairs 25% Price Reduction
	(000 omitted)
Sales	$50,000
35% rebate	17,500
	$32,500
Royalty	3,250
	$29,250
Costs	7,500
	$21,750
B&L's share	$28,375

The above table eliminates the $1,650,000 deduction from NPD's share for prior research expenses which is a one-time bonus. On the other hand, no allowance is made for a possible reduction in costs, a potential which we would regard as being reasonably likely. On the above basis, the per share contribution to B&L would equal $5.53. If the profit contribution from the sterilizer were included, the total earnings would be $7.70 per share.

Foreign Potential: The foreign market for contact lenses is smaller than that in the U.S., although information on the total size of the ophthalmic market is limited. B&L has rights from NPD covering (i) Canada, (ii) Central and South America, (iii) the Republic of South Africa, and (iv) Israel. The contract covering sales in these areas calls for B&L to pay NPD 10% of the sales value of the lens. NPD has rights to certain Far Eastern and Pacific markets, which have subsequently been issued to Hydron Corp., a partially-owned affiliate of NPD. Hydron has not concluded any joint arrangement but, particularly if the U.S. program works satisfactorily, we believe that B&L could eventually obtain rights to Japan, Australia and New Zealand -- in total an optometric market probably second in size to that in the U.S. In addition, B&L is negotiating with NPD and the Czechs for rights to European countries.

As yet, B&L has not begun to market its lens in any of the foreign markets presently available to it. We believe, as a guess, that B&L could generate sales of 200,000 pairs of lenses in these markets in two years, priced at $40 per pair. If this were to be achieved, B&L's revenues could be as much as $8 million. Pretax margins on this, even after the 10% royalty payment to NPD, could be 30% suggesting a contribution to pretax earnings of $2.4 million. If the tax rate were 40%, the per share contribution would be equal to $0.56.

Insurance: In addition to the above projections, B&L has also announced its intention to establish an insurance program on its lenses. The features of the insurance plan have not been discussed but, broadly speaking, B&L will offer users a policy comparable to those offered for hard lenses, probably priced at $30 per year. In hard lenses, the insurer, the largest of which is RLI Corp. of Peoria, Ill., agrees to insure the patient typically for $15 per year. If the user loses his lenses the insurer pays the cost of replacing them to the laboratory -- normally about $15—$20 per pair. In addition, the fitter typically charges an additional $20 to refit the patient. RLI, as a case in point, has experienced rapid growth in recent years, with revenues from premiums and investment income rising to over $3 million in 1970 from about $100,000 in 1966. Earnings, over half of which are represented by investment income, were about $175,000 last year. In 1970, RLI wrote policies covering an estimated 20% of new contact lens wearers, raising its coverage population to 214,000 wearers. RLI's only substantial competition at this time, prior to B&L's entry, consists of fitters writing their own insurance.

If B&L holds its $30 premium charge (RLI will continue its $15 charge on the soft lenses) and if B&L is able to insure 25% of the patients using its lenses, we believe that the revenue potential by 1973 would be something on the order of $13 million -- $12 million from premium income and $1 million from investment income. The expenses against this income could be relatively low due to (i) probable lower loss experience among Soflens users since the lens is more closely bound to the cornea and (ii) the fact that B&L itself will replace the lens for essentially only the costs of producing the lens, probably on the order of $1.00 per lens.

We believe, however, that B&L's premium charge will be reduced over time and deflate the potential income implied in the above discussion. Nevertheless, earnings from the insurance operation could be $1—$2 million by 1973.

Finances

B&L's financial requirements have increased considerably in recent years, stemming mainly from a far more aggressive facilities construction program. Through most of the past five years, B&L's receivables and inventories have been under exceptionally close control, which, although releasing capital for longer—term purposes, may have had the effect of suppressing business with the nation's highly fragmented network of ophthalmic laboratories.

The following table shows B&L's inventory turn and accounts receivable experience over the past eight years:

	A/R (in days)	Inventory Turn (times per year)
1963	79	2.73
1964	68	2.91
1965	71	3.00
1966	69	2.91
1967	65	2.54
1968	65	2.50
1969	71	2.56
1970	76	2.35

The following table shows B&L's sources and uses of funds statement for the past six years (000 omitted):

	1965	1966	1967	1968	1969	1970
Sources						
Net Income	$4,075	$5,640	$ 3,818	$4,300	$ 5,046	$4,246
Depreciation	2,987	3,330	3,737	4,099	4,192	4,403
Deferred taxes	500	500	(50)	250	320	550
Other	292	164	16,007*(a)*	513	462	653
Total	$7,853	$9,635	$23,512	$9,161	$10,020	$9,852
Uses						
Capital spending	$3,880	$5,999	$ 7,770	$5,145	$ 4,520	$6,230
Acquisition & Other	–	2,082	–	–	700	1,586
Dividends	1,348	1,882	2,031	2,115	2,192	2,240
Reduction in debt	600	600	1,493	800	800	305
Increase in WC	2,026	(927)	12,218	1,101	1,808	(509)
Total	$7,853	$9,635	$23,512	$9,161	$10,020	$9,852

(a) Consists mainly of long–term debt in the amount of $15,000,000.

As indicated, B&L has added about $33.5 million to its plant account over the past six years. These outlays have been concentrated in (i) a sizable expansion of the Applied Research Laboratory facilities, both in the U.S. and abroad and (ii) substantial expansion of the frame capacity in 1967–68 and lenses in 1970 (with some spilling into 1971).

Although not shown directly in the above Sources and Uses of Funds statement, short–term debt has increased steadily from $3.9 million at the end of 1965 to $22.4 million at the end of 1970. In total, the company has $21.0 million more debt outstanding at the end of 1970 than at year–end 1965.

The company's capital needs will continue heavy in 1971, with new plant outlays probably on the order of $6.0–$6.5 million. The company will experience a substantial buildup in its accounts receivables as the Soflens program gets under way, but this will be short term in nature. Under the terms of the marketing approach, fitters are allowed to deposit only $500 with B&L for the 72 lens kit plus sterilizers, a kit with a total price of close to $3,000. The remaining $2,500 is payable over a six months period without interest. Accordingly, if B&L is successful in pipelining 25% of the nation's fitters in 1971, sales of $13 million would result. On the above financing basis, $2.2 million would be received immediately and $10.8 million would be charged to accounts receivable.

B&L has announced that it is contemplating the issuance of $20 million in equity–type securities in order to (i) clean up the present short and long term debt and (ii) enable the company to handle its income tax liabilities more readily, a state of affairs which would only be a problem if the Soflens program is successful.

Ophthalmic Industry

The ophthalmic industry consists of a relatively small number of firms producing and selling frames (known as "fronts" and "temples" in the trade) and lenses. Further, these firms frequently also produce a line of associated products such as sunglasses and industrial goggles. The industry consists of about 40 producers, with two of these -- American Optical and Bausch & Lomb -- probably accounting for somewhat less than half of total shipments. Other factors include the Shuron Continental Division of Textron, the Univis Division of Itek Corp. (sales of $24 million in 1969) and the Titmus Division of Esterline Corp. (sales of $35 million). Only AO and B&L occupy a meaningful position in both lenses and frames.

The lens producers purchase "blanks" from the major glass manufacturers (except B&L which maintains its own glass making facility), machine the blank to conform to optical standards and then ship the lens to the nation's 1,200 independent laboratories or 455 captive laboratories (250 with AO, 165 with B&L and about 40 with Univis), each of whom performs a role in the distribution channel as a prescription laboratory. The laboratory produces the finished pair of eyeglasses and ships to retail dispensers.

From the professional standpoint, consumer needs are met by a combination of (i) ophthalmologists -- about 8,000 practicing in the U.S. -- a specialty of medicine concerned primarily with diseases of the eye but increasingly involved with the measurement of vision and the prescription of eyeglasses or contact lenses, to correct vision defects, (ii) optometrists -- about 18,000 in the U.S. -- a group of professionals trained specifically to measure the eye for visual acuity and (iii) opticians -- about 3,000 in the U.S. -- who are licensed to sell frames and lenses which conform to the prescription of the ophthalmologist, much as the pharmacist fills the prescription for medicine written by the physician.

Ophthalmologists and optometrists are both involved in the practice of vision correction but several distinctions are useful. Ophthalmologists have traditionally deemphasized the aspect of their practice devoted to the simple correction of vision, although these attitudes now appear to be changing. To the extent that ophthalmologists have become involved in this, the typical approach has been for the ophthalmologist to measure the eyes for vision difficulties and, if sight correction is needed, to write a prescription for an appropriate lens to be filled by an optician. Ophthalmologists are typically more concerned with total vision problems -- frequently involving cornea diseases, tear transport problems, loss of muscular control, psychological complications, as well as the far more common problems with simply properly diffracting light through the cornea through to the retina. In contrast, optometrists are concerned almost entirely with the correction of vision caused by errors of refraction. Optometrists typically not only measure the eye but also supply the correction device -- either spectacles or contact lenses. Ophthalmologists are practically solely in practice for themselves or with a small number of other physicians in a partnership.

Statistical data relating to important aspects of the ophthalmic industry are difficult to develop. Nevertheless, with this caveat, it appears reasonably clear that industry growth has proceeded at a rate centering around 10% annually over recent years. The following table shows Bureau of Census data relating to the size of the market and important subcomponents in the 1961 to 1970E period (in millions):

	Fronts & Temples			Lenses							
Year	Gold or Metal	Other	Total	Plastic	Contact	Other	Total	Industrial Goggles	Sunglasses	Other	Grand Total
1961	–	–	–	–	–	–	–	–	–	–	$217.8
1962	–	–	–	–	–	–	–	–	–	–	241.5
1963	$ 5.0	$63.1	$ 68.1	–	–	–	$ 70.0	$23.0	$45.0	$29.1	244.1
1964	–	–	–	–	–	–	–	–	–	–	262.9
1965	–	–	–	–	–	–	–	–	–	–	282.5
1966	–	–	–	–	–	–	–	–	–	–	313.5
1967	6.0	78.2	84.2	$ 4.0	$ 7.2	$123.0	134.2	35.4	53.6	36.3	343.7
1968E	–	–	–	–	–	–	–	–	–	–	–
1969E	–	–	–	–	–	–	–	–	–	–	–
1970E	15.0	90.0	105.0	15.0	14.0	150.0	179.0	38.0	70.0	45.0	437.0

As the above data indicate, growth in the overall market has been fully satisfactory and has been fueled by (i) rising educational and income attainments of the nation's population, two critical determinants of demand for medical care, (ii) the relatively good economic conditions during most of the period under review which provided a strong backdrop to consumers seeking a broadening range of medical services beyond those of a "crisis" nature (this includes optometry, dentistry, etc.), (iii) a trend, rising in tempo as the above period proceeded, towards the greater acceptance of spectacles from a fashion standpoint, and (iv) the more vigorous promotion of ophthalmic services as the industry became more concentrated.

Although AO and B&L have retained their position overall, this position has not been materially strengthened over the past ten years despite a number of natural economic advantages including greater product designs capabilities, a far greater ability to extend credit to the dispenser, and the existence of a consumer franchise. This has probably resulted from a combination of factors, including (i) foreign competition, particularly in frames, (ii) management's increasing emphasis on diversification into optical goods and other types of scientific instrumentation, and (iii) the growth of contact lenses which are produced on a far more fragmented basis by about 300 different laboratories.

Within this framework, we believe that B&L maintained and perhaps even gained share in the 1961–67 period, but since then has slipped in share mainly to AO. This has been caused by all of the above outlined factors, supplemented by the enormous effort involved in the Soflens program in recent years and by a lack of satisfactory lens production capacity.

Over the next few years, we expect that growth in the ophthalmic industry will be at a rate centering around 10%. This would result mainly from the reviving economy, carrying consumer income higher and enabling a larger number of people to satisfy demand, not only current but pent–up, for vision care. Further, growth could be spurred by a greater acceptance of spectacles as a fashion accessory, resulting in ownership of more than one pair of spectacles by more people. This trend may have been masked by the economic downturn but could be reasserted as 1971 and 1972 unfold. Finally, the demographic characteristics of the next few years favor a somewhat faster growth curve.

Optical Instruments

Unlike the ophthalmic industry, the optical goods field is highly fragmented. Each subsection of the industry has a specific competitive situation and differing leaders. B&L competes in many, but not all, segments of the optical goods market.

Products included in this field broadly include microscopes, spectrophotometers and colorimeters (both used in scientific laboratories for measurement purposes), medical instrumentation, and sighting equipment.

Growth in this field was sustained at a high rate in the 1960–1968 period, with progress facilitated by (i) the growing market for all scientific apparatus, supported largely by federal government support, particularly in the life sciences which consume large amounts of optical equipment (microscopes, spectrophotometers, electrophoresis equipment, etc.), (ii) good growth in the use of optical goods in educational systems, (iii) the burgeoning of new fields in optical goods, such as infrared technology, fiber optics, holography and lenses, and (iv) the rapid development of markets for optical goods in the clinical laboratory, used primarily to measure blood components and body proteins. The following table shows the optical goods market in the 1961 to 1970 period (in millions):

Year	Microscopes	Spectrometers	Other optical equipment	Laboratory analysis equipment	Sighting equipment	Other	Total
1961	$14.9	$34.1	–	–	–	–	$160.9
1962	17.8	39.4	–	–	–	–	185.2
1963	32.3	50.4	$ 70.9	$ 43.0	$51.1	$21.8	247.7
1964	–	–	–	–	–	–	274.7
1965	–	–	–	–	–	–	307.9
1966	–	–	–	–	–	–	360.7
1967	32.1	76.4	127.2	104.2	69.5	42.5	409.4
1968E							450.0
1969E							530.0
1970E							550.0

Over the past three years, conditions in the optical goods field have become considerably more difficult. This has mainly stemmed from the marked slowdown in federal support for scientific spending. FD&S has commented on this development in reports on Beckman Instruments and Tektronix. The slowdown has pinched the entire scientific establishment and ordering of all types of equipment, supplies and support has suffered. Furthermore, the optical goods industry has also suffered from foreign competition, particularly in microscopes. Finally, intra–industry competition has been exceptionally keen, caused by the buildup in AO's position, which prior to 1965 was weak, and the expansion of the B&L line further into the spectrophotometry area, causing a degree of price competition not in evidence in the first half of the 1960's.

These factors combined to produce an exceptionally difficult year in 1970, which is extending into 1971. However, we believe that the difficulties of the late–1960's are alleviating and a return to more rapid growth, accompanied by a revival in profit margins, is clearly likely over the next few years.

As discussed in earlier FD&S reports (particularly Beckman), federal support for research appears to be redeveloping. This will pump much needed funds into the research pipeline which, beginning probably in 1972, will result in a pickup in orders. This could provide a more hospitable environment for producers of these goods, eliminating a degree of price competition which has restricted margins in the past.

American Optical – Bausch & Lomb

We believe that a direct comparison with American Optical, B&L's major competitor, would be illuminating for the purposes of delineating the differences between the two, the different directions of development over the past decade, and the benefits accruing to AO from its merger with Warner–Lambert in 1967.

The following table presents pertinent statistical data, over the past decade, for B&L and AO:

	Sales			Net Income		
	AO	B&L	B&L as % of AO	AO	B&L	B&L as % of AO
	(000)	(000)		(000)	(000)	
1960	$ 88,551	$ 66,086	74.6%	$ 2,806	$2,309	82.3%
1961	89,645	73,333	81.2	2,892	1,987	68.7
1962	97,900	75,759	77.4	3,338	2,000	60.5
1963	105,098	79,118	75.3	3,650	2,127	58.3
1964	115,539	87,538	75.8	5,089	3,343	65.7
1965	127,063	96,624	76.0	7,131	4,406	61.8
1966	143,002	115,907	81.1	10,074	6,046	60.0
1967	169,721	119,956	70.7	12,400E	3,965	31.9
1968	191,558	122,946	64.2	14,500E	4,412	30.4
1969	217,295	132,836	61.1	16,500E	5,046	30.6
1970	231,007	134,133	58.1	16,750E	4,246	25.3

The substantially superior performance of AO during the latter half of the 1960's reflects (i) a higher flow of new products in the ophthalmic part of its business, including the Tillyer Masterpiece, a focusing lens which expands peripheral vision introduced in 1965, (ii) the rapid buildup in AO's ophthalmic examination instrument business, (iii) a substantial expansion in the sunglass business (under the Cool–Ray tradename), probably increasing from $10 million in 1965 to $35 million in 1970, (iv) the increasing success of AO in optical goods, particularly in laboratory apparatus, aided by Warner–Lambert's extensive knowledge of the needs of this market. AO has undoubtedly benefitted from the association with Warner–Lambert from a number of standpoints, including a greater financial capability, the strengthening of the instrument part of the product line, and the installation of a series of more sophisticated management techniques.

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COMPANY BULLETIN

August 20, 1971
S&P 500: 98.30

BAUSCH & LOMB, INC.
(BOL - NYSE)

Recent Price:	156	Dividend:	$0.80
Price Range 1970:	80-27	Yield:	0.6%
Price Range 1971E:	160 1/2-46	P.E.R. Range 1970:	52.3X-17.6X
E.P.S. 1970:	$1.53	P.E.R. Range 1971E:	69.8X-20.0X
E.P.S. 1971E:	$2.30	P.E.R. 1971E:	67.8X
E.P.S. 1972E:	$6.00	P.E.R. 1972E:	26.0X

Summary

B&L is now building momentum in its Soflens program with the introduction process accelerating across the country. Acceptance has been good and we see no reason to alter our estimated parameters discussed in FDS' July 14, 1971, report on B&L, specifically that Soflens will contribute $0.70 per share to earnings in 1971 and $4.00 in 1972.

The company has recently negotiated Soflens rights to certain Far Eastern markets and is in the process of making a medium-sized acquisition in the binocular field.

We expect the company, before the end of the year, to split the stock and file for an equity offering of $20 million or so. These actions could have opposite psychological impacts on the market price of the stock. In the final analysis, however, all eyes are on the Soflens. We believe it is meeting expectations and, accordingly, continue to regard the stock as an exciting longer-term holding.

Soflens Progress

B&L's progress with the Soflens continues excellent although the company will not quantify this experience. It will say, however, the the clinical success of the lens -- in terms of the number of successful fits per patient -- is high (and improving); further, in terms of commercial sales the rate of ascent has been substantial in recent weeks.

The lens has been introduced essentially throughout the West Coast. B&L is now beginning to introduce it in Eastern markets, with Rochester, in the

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week of August 2; Pittsburgh, August 9; Cleveland over the weekend of August 14-15; Detroit, August 16; and Chicago, August 23. The lens will be introduced into the New York market in mid-October. By roughly the end of November, the lens will be available nationwide. We continue to believe that the lens will make a moderate, but meaningful, contribution to earnings in 1971, perhaps $0.70 per share, and a far more substantial contribution to 1972 earnings, something on the order of $4.00 per share.

Earnings in B&L's third quarter will begin to reflect this impact and could be as much as $0.70 per share, compared with $0.39 per share in the comparable 1970 period. Of this, we would expect $0.45-$0.50 per share to stem from B&L's traditional operations and the remainder from the Soflens program. In the fourth quarter, B&L's earnings could amount to $0.85-$0.90 per share, of which $0.45-$0.50 per share would be from traditional operations and the remainder from Soflens.

We continue to see nothing from Frigitronics (Griffen) -- in the way of either (i) the clinical performance of its lens (Naturalens), (ii) its progress through the FDA or (iii) its competitiveness with the Soflens -- to abort B&L's momentum.

Far Eastern Market

As indicated in our Basic Report on B&L, National Patent Development (through its subsidiary, Hydron Pacific) has issued rights to certain Far Eastern markets to B&L. The arrangement, terms of which are undisclosed, will be comparable to that prevailing in the U.S., specifically calling for a split of pretax profitability derived from lens sales, after deducting a 35% unallocated cost allowance and all directly allocated expenses. Countries included in the arrangement are Japan, South Korea, Philippines , Taiwan and Hong Kong.

The Czech patents which cover the Soflens in the U.S. have been filed with (and in some cases issued) in the markets covered by the agreement. The strength of these patents is probably of a lower order of magnitude than in the U.S. but could form a bar to quick and easy entry by other factors.

The potential market for Soflens in the Far East is large, particularly in Japan where the backdrop is amenable to the development of an interesting market: a large, affluent population, properly distributed in terms of age and visual characteristics, highly motivated and interested in health products of all types. B&L will begin to explore this market soon and, in fact, has a team of executives in Japan at the present time for an extended first hand examination of the problems involved.

B&L is now negotiating for rights to Europe which are held on an exclusive license basis by NPD.

Bushnell Acquisition

B&L has agreed to acquire Bushnell Optical Corp., for 73,000 shares of stock. Bushnell is the nation's largest importer and distributor of binoculars, mainly selling a line of medium-priced Far Eastern products through camera stores, sporting goods shops and mass retailers. More than 95% of all binoculars in the U.S. are imported and the only significant domestic producer is B&L which has a small position in the overall market, mainly with a line of products retailing for over $200 per pair. Bushnell has a great deal of expertise in the design of the product, securing a proper manufacturer -- dealing largely with a series of smaller firms in Japan and, to a lesser extent in Hong Kong, South Korea and Taiwan -- and researching the American market for future trends. Bushnell's record has been good, its trade position is strong and growth prospects are interesting. Sales in 1970 were $9 million and we estimate that earnings were on the order of $500,000. Accordingly, the acquisition could add as much as $0.13 per share to B&L's 1971 earnings. In 1972, due to the expected rapid increase in B&L's profits, the incremental addition will be smaller but still could be as much as $0.05 per share or so.

President Nixon's recent actions relating to a 10% import surcharge will impact all import binocular companies generally, while slightly aiding B&L's domestic business. Binoculars will continue to be overwhelmingly imported.

The Nixon Program

B&L will be moderately aided by the Nixon economic program in a variety of ways, including the following:

(i) The investment tax credit will probably be normalized, as was the Kennedy ITC. In any event, U.S. capital spending over the next year will probably be no more than $5.0 million, of which a portion will be in physical plant not covered by the present guidelines. On a rough basis, 10% of $3.0 million, normalized over an eight year period, would be about $0.01 per share per year.

(ii) The wage-price freeze will have virtually no impact on B&L.

(iii) The stimulatory effect of the Nixon program on consumer spending, to the extent that the present euphoria lingers, must be considered a beneficial factor in assessing the short-term outlook for the Soflens and, for that matter, for the entire ophthalmic industry.

(iv) The de facto devaluation, if it evolves into a bona fide 5%-6% devaluation (averaging weaker currencies with stronger ones), will result in a one-shot benefit in the conversion of about $14 million worth of net current assets to dollars. This would probably be credited to the balance sheet and would be insulated from the income account. However, the devaluation will also have the effect of restating B&L's foreign earnings upward by 5%-6% or so. On estimated foreign earnings in 1971 of $1.5 million, B&L's profits would be inflated by $75,000 or $0.03 per share.

(v) The import surcharge as well as the devaluation will serve to reduce the momentum and impact of foreign instrument suppliers in the U.S. market. This should clearly and importantly aid U.S. suppliers. B&L derives only a modest portion of its earnings from this source, but it has been depressed by, among other things, foreign competition. Relief from this pressure should accelerate the recovery in this portion of B&L's business.

Thus, on balance, the Nixon program is stimulatory to B&L, both short and long term. We are not, however, increasing our earnings estimates simply because of the overshadowing importance of the Soflens program.

	Net Sales (000)	Pretax Earnings (000)	Margins	Tax Rate	Net Income (000)	E.P.S.
3/31/69	$32,216	$2,601	8.1%	51.3%	$1,266	$0.47
6/30/69	34,608	2,795	8.1	49.7	1,405	0.51
9/30/69	32,424	2,545	7.8	47.7	1,330	0.49
12/31/69	33,587	1,705	5.1	38.7	1,045	0.38
3/31/70	31,564	2,043	6.5	50.7	1,008	0.36
6/30/70	35,181	2,177	6.2	45.9	1,177	0.43
9/30/70	33,400	1,881	5.6	42.8	1,076	0.39
12/31/70	33,987	1,574	4.6	37.4	984	0.35
3/31/71	31,028	1,420	4.6	46.5	760	0.27
6/30/71	37,003	2,410	6.5	46.3	1,294	0.45

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PROGRESS REPORT

FAULKNER, DAWKINS & SULLIVAN October 26, 1971
S&P 500: 95.10

BAUSCH & LOMB, INC.
(BOL–NYSE)

Recent Price:	142 1/2	Dividend:	$0.80
Price Range 1970–71:	160 1/2–27 1/8	Yield:	0.6%
E.P.S. 1970:	$1.53	P.E.R. Range 1970:	52.1X–17.7X
E.P.S. 1971E:	$2.20	P.E.R. Range 1971E:	72.9X–21.1X
E.P.S. 1972E:	$6.00	P.E.R. 1971E:	64.8X
		P.E.R. 1972E:	23.8X

B&L is now beginning to experience the first wave of sales and earnings from the Soflens program. Earnings in the third quarter of 1971 were up sharply from those a year ago; the gain entirely reflected the impact of Soflens. Additional, probably accelerating, progress is expected in the fourth quarter of the year.

Recent reports relating to contamination and infection of flexible lenses are confined to other products now either on the market or in test and not the B&L Soflens. Nevertheless, difficulties with other products, even through chemically and physically distinct from B&L's, have the clear potential of disturbing consumer and fitter confidence in all flexible contact lens products. B&L is anxious to see these questions resolved and, on balance, we believe that this problem is being defused by (i) the removal from the market of a number of intrastate products and (ii) the increasingly evident quality gap between B&L's product, thoroughly tested for more than four years and approved by federal regulatory agencies, and other products.

The stock has absorbed the adverse news relating to other flexible lens products in a surprisingly resilient manner. We continue to believe that the company is performing close to the targets outlined in our Basic Report of July 1971; namely we expect earnings approaching $2.30 per share, although earnings could be $0.10 below this. The slippage does not represent underperformance by the Soflens effort, but rather continuing poor operations in B&L's instrument field. Accordingly, B&L's earnings in 1971 will probably reflect $0.65 per share from Soflens and perhaps only $1.55 from traditional operations (compared with $1.53 per share in 1970). In 1972, we expect earnings from the Soflens effort to mount to the area of $4.00 per share and, at the same time, we fully anticipate a vigorous recovery in B&L's traditional operations. This will produce total earnings of about $6.00 per share.

The stock continues to represent a unique participation in one of the most explosive areas of the health market.

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Operating Trends

Apart from the Soflens program, B&L's operations continue depressed, a trend which persisted in the third quarter of the year. This slippage, which probably would have produced earnings of $0.35 per share or so without the Soflens, was caused entirely by continuing slack conditions in the instrument operations. We estimate that sales in the third quarter of 1971 would have been flat compared with those a year ago. Accordingly, as discussed below, sales of the Soflens were probably about $3.5 million and earnings may have been $0.25 per share. The following table shows B&L's record since 1969 on a quarterly basis:

	Net Sales	Pretax Earnings	Margin	Tax Rate	Net Income	E.P.S.
	(000)	(000)			(000)	
3/31/69	$32,216	$2,601	8.1%	51.3%	$1,266	$0.47
6/30/69	34,608	2,795	8.1	49.7	1,405	0.51
9/30/69	32,424	2,545	7.8	47.7	1,330	0.49
12/31/69	33,587	1,705	5.1	38.7	1,045	0.38
3/31/70	31,564	2,043	6.5	50.7	1,008	0.36
6/30/70	35,181	2,177	6.2	45.9	1,177	0.43
9/30/70	33,400	1,881	5.6	42.8	1,076	0.39
12/31/70	33,037	1,574	4.6	37.4	984	0.35
3/31/71	31,023	1,420	4.6	46.5	760	0.27
6/30/71	37,003	2,410	6.5	46.3	1,294	0.45
9/30/71	37,241	—	—	—	1,686	0.61

In the third quarter of 1971, we estimate that B&L shipped about 40,000 pairs of Soflens. This implies that the company sold about 1,100 kits (consisting of 72 lenses per kit) in the six months of marketing. On a highly tentative basis, this would mean that about 5% of the nation's 21,000 potential fitters (3,000 ophthamologists and 18,000 optometrists) have purchased the kit. Expenses related to the product introduction have been high and have absorbed a significant portion of the estimated $3.5 million in revenues which this would have generated. On an approximate basis, we believe that expenses were on the order of 70% of sales, implying that earnings were about $1.1 million before taxes, equal after taxes to about $0.25 per share.

In the fourth quarter, B&L will be impacted by (i) continuing pipelining of fitters as the Soflens program reaches a national status and as a higher proportion of fitters in those areas of the country where the lenses were first introduced order the kits and (ii) sales of lenses to patients and consequent reordering of lenses from B&L. It is extremely difficult to explore these factors quantitatively since we have only an impression of overall progress. Nevertheless, we would estimate that B&L could stock an additional 1,500–2,000 kits in the fourth quarter, bringing the total number of fitters prescribing

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the Soflens up to about 12% of the nation's total licensed fitters (21,000) and probably 17% of the nation's active fitters (probably closer to 15,000 professionals). This would generate sales of about $5 million. In addition, B&L could sell about 40,000 pairs of lenses to fitters as replacements for those sold to patients. This would generate an additional $2.6 million in sales. On the combined sales level of $7.6 million, we estimate that B&L's income account would take the following shape:

Fourth Quarter 1971
Estimated Soflens Earnings

Sales		$7,600,000
35% Allowance	$2,660,000	
Expenses	2,000,000	
Royalty	156,000	
Total Costs	4,816,000	
Operating Earnings		2,784,000
R&D Recoup	1,650,000	
Pretax Earnings		1,134,000
B&L's Share *(a)*		4,877,000
Unusual Costs	3,000,000	
Adjusted Share		1,877,000
Taxes @ 50%		938,500
Per Share		$0.37

(a) Consists of 50% of pretax earnings, 35% allowance, and the R&D recoup.

In the fourth quarter of 1971, we expect B&L's traditional business, excluding Soflens, to perform more acceptably than in the third quarter. Specifically, we expect that B&L's ophthalmic business will continue to expand, perhaps at a 15% rate over the fourth quarter of 1970. The turnaround in the instrument business has been delayed, but could commence to a minor extent in the fourth quarter.

Accordingly, we anticipate the following trends to be evident in the fourth quarter of 1971:

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Estimated Source of Earnings

	First Half	3Q	4Q	Full Year
Ophthalmic	$0.45	$0.25	$0.25	$0.95
Scientific	0.07	0.01	0.01	0.09
Consumer	0.03	0.02	0.04	0.09
Foreign	0.25	0.10	0.20	0.55
Soflens	0.05	0.23	0.37	0.65
	$0.72	$0.61	$0.87	$2.20

It should be recognized that the above table does not include the beneficial impact of acquiring Bushnell Optical Corp., now in the process of consummation. This acquisition, on a pro forma basis, would add $0.12 per share to B&L's per share earnings in 1971. Due to a rapid expected increase in B&L's earnings in 1972, the Bushnell deal would add only $0.01 per share to results next year.

The following table shows the calculations involved:

Estimated Contribution From Bushnell

	1971	1972
B&L	$6,000,000	$16,368,000
Bushnell	500,000	500,000
Total Earnings	6,500,000	16,838,000
B&L Shares	2,728,000	2,728,000
Bushnell Shares	73,000	73,000
Total B&L	2,801,000	2,801,000
B&L Earnings Ex Bushnell	$2.20	$6.00
B&L Earnings With Bushnell	$2.32	$6.01

1972 Prospects

We see no reason to alter our original targets for B&L. Specifically, we believe that 1972 will be marked by (i) continued reasonable progress in the ophthalmic activities, (ii) a recovery, although somewhat attenuated from earlier expectations, in instruments, (iii) a better performance in consumer activities and (iv) a further expansion in foreign results. Additionally, and not included in the above reading for 1972, we would expect B&L to continue to explore, probably successfully, a number of acquisition opportunities. These activities will be most likely to center on foreign acquisitions -- a potential which would probably add to earnings.

Based on our various inputs, the Soflens effort appears to be picking up momentum. Specifically, we believe that B&L will sell 500,000 pairs of lenses in 1972. As the company enters the new year, the lens will be available on essentially a nationwide basis. Furthermore, we believe that the stress now visible between ophthamologists and optometrists, fueled largely by the increasing role which ophthamologists are playing in fitting contact lenses (formerly almost entirely fitted by optometrists), will fade as the economics of fitting the Soflens become so evidently attractive. This could eliminate a substantial portion of the opposition, largely unfounded, by optometrists who have instinctively reacted poorly to what now appears to be an ophthamologist--controlled product. Accordingly, this could cause a significant portion of the nation's optometrists to order kits from B&L. On a rough basis, we estimate that B&L will be able to sell about 4,000 kits to new practitioners during 1972 -- meaning those professionals who had not previously bought the kit. This will create sales of 144,000 pairs of lenses and will mean that about 45% of the active contact lens fitters in the country will be fitting the Soflens.

In addition, we estimate that sales of lenses to professionals who are reordering due to fitting patients will approach 400,000 pairs. This would represent only a small fraction of (i) those people entering the market for some vision correction device for the first time, -- probably close to 2 million people, (ii) those people who convert from eyeglasses to contact lenses -- probably in excess of 500,000 patients in most normal years, and (iii) those people who now wear hard contact lenses but who, for various reasons, are dissatisfied with them.

Using rough guideline numbers, we believe that generation of this type of lens orders will result in the following income account to B&L in 1972:

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Soflens Earnings Estimates: 1972

Sales	$32,500,000
35% Rebate	11,375,000
Royalty	1,625,000
CGS + Direct SG&A	5,000,000
Pretax Income	14,500,000
B&L's share *(a)*	18,625,000
Taxes @ 50%	9,312,500
Per Share	$3.63

(a) Represents the sum of 50% of pretax income and the 35% rebate.

It should be recognized that B&L's costs of production and sales are likely to decline (in proportional terms) in 1972 due to the increasing experience with the product, the imminent startup of two additional production machines (bringing to four the total number of machines turning out the Soflens) and the virtual national availability of the product by early–1972 (contrasted with the costly introductory seminars held throughout 1971). Further, added to the $3.63 per share estimated for 1972 from the Soflens itself, B&L will also be selling (i) the sterilizer (for $21 apiece), which could generate additional sales of $8 million or so (400,000 units), on which we estimate that B&L could make $3 million pretax, equal to $0.60 per share after taxes, (ii) insurance, underwritten by Utica Mutual, on which B&L will probably be receiving a portion of the premium income (perhaps $5 of the $30 annual charge), proceeds of which could be as much as $1.0–$1.2 million -- equal to about $0.20 per share after taxes, and (iii) royalties received from Allergan Pharmaceuticals on a bactericidal and fungicidal solution, to carry the Soflens tradename; this product, which is now in the IND stage, could be available by late–1972 and could obviate the need for the sterilizer; the royalty rate has not been disclosed but, if royalties are payable at a 7% rate and if the Soflens solution market is as much as $5 million ($8 per year for 630,000 users), the royalty income to B&L would be $350,000 or $0.07 per share after taxes. As a result of these factors, we will continue to use a $4.00 per share estimate for Soflens and all associated products in 1972.

This creates the following potential for 1972 earnings by division:

Estimated Earnings By Source

	1971	1972
Ophthalmic	$0.95	$1.10
Scientific	0.09	0.20
Consumer	0.09	0.10
Foreign	0.55	0.60
Soflens	0.65	4.00
Total	$2.20	$6.00

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Product Modifications

A number of changes, relative to the original introduction of the Soflens in early–1971, are being made in the product. These include the following:

- The lens will soon be made available in five base curves, enlarging the number of potential eyes which can be precisely fitted by the product. This will be made available as soon as possible. At present, B&L is actually backordered; demand for the unit has exceeded the company's ability to supply product. Consequently, expansion of the number of sizes made available must await the startup, scheduled for November, of two additional lens machines.

- The lens will also be made available for farsighted eyes, a condition which comprises 15% of all vision defects.

- Fitters now must make a $500 down payment of the Soflens kit, valued at $2,905. The full purchase price is recorded on B&L's books at the time of shipment. The fitter has the right, unlike earlier in the program, to return the kit to B&L for only a small penalty. To date, returns have been practically non–existent.

Foreign Marketing

B&L has secured rights, through National Patent Development, to certain Far Eastern countries, in addition to its existing arrangement covering the Western Hemisphere (and certain smaller areas). Rights to Europe have not yet been obtained from NPD, but B&L appears to be moving towards the European market in the absence of such an arrangement. Marketing in Canada is scheduled to begin in early–November; the lens will be made available rapidly across the country in these markets. Certain South American countries will be entered in late–1971. B&L will begin to market the lens in Japan in early–1972 and, over the course of 1972, the European market will be developed.

It is far too early to develop even a tentative feel for the earnings potential of these foreign markets. However, we believe that sales in 1972 could be as much as $4–$5 million, implying sales of 80,000–100,000 pairs of lenses at an average sales price of about $50 per pair. The arrangement with NPD differs in these markets, calling for a straight payment of 10% of the sales prices for the Western Hemisphere, Israel and South Africa and a profit split in Japan and the Far East comparable to the U.S. situation (a 35% overhead allowance and a 50%–50% split of pretax profits). Accordingly, the profits on this $4–$5 million will be heavily contingent on the source of sales, but we believe that B&L could make as much as $1.0 million pretax in 1972 from all foreign areas, equal to $0.23 per share assuming a 40% tax rate.

Equity Financing

B&L intends to raise about $20 million (perhaps as much as $25 million) through an equity financing sometime in early–1972. This would enable the company to practically eliminate short–term loans, which amounted to $22.4 million at the end of 1970. At present prices, B&L could raise $25 million with the issuance of about 120,000 shares of stock equal to 6.0% of the common stock outstanding (including common stock equivalents). If the average interest rate on the $22.4 million in short–term loans were 7.5%, the interest saving would be $1,680,000. With the larger number of shares outstanding (2,907,000 after the financing), per share earnings would be increased to $6.08 (from $6.01 after the Bushnell acquisition).

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1/5/72

BAUSCH & LOMB, INC. (BOL) ($181) Leonard M. Wilson

Canadian Investigation, Revised Earnings Estimates

The Wall Street Journal Article:

The Wall Street Journal (1/4/72) has reported that the Food and Drug Directorate of the Canadian government is investigating the soft contact lens. Although the Bausch & Lomb lens is apparently being investigated along with other soft contact lenses, the Canadian researchers cited by the article directed their criticism only at the lens produced by Griffin Laboratories, a subsidiary of Frigitronics, Inc. The Canadian researchers claim to have evidence that bacteria can penetrate within the Griffin lens, and that Griffin sterilizing techniques have shortcomings. The Bausch & Lomb contact lens was not implicated in these findings.

Bacteria and the Bausch & Lomb Lens

Bausch & Lomb has consistently maintained that bacteria cannot get inside its soft contact lens. None of the independent investigators either in the U.S. or Canada have alleged that any bacteria can penetrate the Bausch & Lomb hydrophilic plastic. Industry contacts indicate that the Bausch & Lomb hydrophilic plastic has a different molecular structure from that of the Griffin material.

Boiling, the technique used with the Bausch & Lomb lens for destroying surface bacteria, was approved by the FDA as being both safe and effective. As an alternative to boiling, Bausch & Lomb is working with Allergan Pharmaceuticals on a sterilizing solution. Since FDA clearance will be required, it may be 1 year or more before the solution is available for use.

The threat of eye infection from soft contact lenses may well be exaggerated, although it is an aspect of the lens which justifiedly calls for scrutiny. Eye infections normally do not occur unless the surface tissue of the eye is broken or abraded. In fact The Wall Street Journal quotes Dr. Morgan, a Canadian ophthamologist, "the healthy eye has tremendous resistance to bacteria." Nonetheless, professional skepticism toward the soft contact lens, which initially arose in part

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BAUSCH & LOMB - (continued)

from doubts about visual acuity, now seems provoked mainly by concern over bacteria.

Controversy: Negatives and Positives

There could be a negative effect on acceptance of the Bausch & Lomb "Soflens" if the controversy results in a generalized impairment of public and professional confidence.

It is probably constructive, however, that Bausch & Lomb has not been cited by critical investigators in their findings. This might increase professional confidence in the Bausch & Lomb soft contact lens vis-a-vis potential competitors. Moreover, the questions raised about the Griffin lens could induce a mood of caution on the part of the FDA. If so, Bausch & Lomb's lead time might be extended.

Griffin has recently filed an NDA for therapeutic approval, and a filing for a cosmetic approval may come within one to two months. Griffin cannot be a meaningful competitor until cosmetic approval is secured from the FDA. We think that cosmetic approval is unlikely much before six months, particularly in view of the refuelled controversy over the attributes of the Griffin lens.

Earnings Estimates Revised

We are raising our 1971 estimates for Bausch & Lomb to $2.45-2.60 per share on a pre-split basis from $2.10-2.35 per share. The acquisition of Bushnell Optical, a wholesale distributor of optical products, should add about $.18 per share; earnings will benefit by $.05-.10 per share from currency adjustments; and soft contact lens earnings could be in the range of $.75-.90 per share for 1971.

For 1972, we now believe that $5.75-6.50 per pre-split share may be attainable, compared with our earlier estimate of $5.25-6.15 per share, with first quarter results appreciably surpassing $1.00 per share. The soft contact lens could account for around two-thirds of 1972 estimated earnings.

Sales in the U.S. of both fitting sets and refills are proceeding well. The "Soflens" is being sold in Canada and

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BAUSCH & LOMB - (continued)

could contribute modestly to earnings in the fourth quarter of 1971. Japanese and Latin American markets are unlikely to make any contribution until mid-1972, but could have a beneficial impact in the second half. The fitting set for farsightedness, which was originally scheduled for January shipment, is now being targeted for March or April owing to unforeseen problems. Domestic instrument volume, however, appears to be recovering more slowly than we had anticipated.

Point of View

Bausch & Lomb will probably remain a highly volatile stock until all the uncertainties regarding the soft contact lens are dispelled. Widespread distribution of the fitting sets, in our opinion, should be a key element in eliminating controversy and existing professional skepticism. When large numbers of practitioners have gained clinical experience with the soft contact lens, then most of the reservations and criticism may abate. In the interim, the performance characteristics of the soft contact lens may remain controversial.

The shares are now selling at approximately 29X estimated earnings for 1972, but assignment of an appropriate multiple to Bausch is problematical. If investor enthusiasm mounts on a strong 1971 fourth quarter, and further gains in the first quarter of this year, the stock is likely to give a good account of itself. Bausch & Lomb is currently rated HOLD-BUY.

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themselves, but also in the lens cases and even. This length of time, he says, may result in bac-

ALL OFFICE WIRE January 17, 1972

BAUSCH & LOMB INCORPORATED - BOL
(159 - $0.84 div. - 0.5%)

Friday's Wall Street Journal carried a report that researchers had uncovered several "problems" with soft contact lenses, including alleged difficulty with the Bausch & Lomb soft lenses. These questions were raised at a conference attended by optometrists in New Orleans early last week. We have checked the points raised in this article with Bausch & Lomb, the Food and Drug Administration (FDA) and ophthalmologists who have had extensive experience with the Bausch & Lomb Soflens and other soft contact lenses. Our findings do not support the article's implication that bacterial contamination and lens life are problems of the BOL Soflens. Our findings are summarized below in response to specific questions raised by this article.

1. A Canadian microbiologist, Alpha Charles, was said to have found live bacteria on a Soflens that was asepticized, using the procedure recommended by BOL. Apparently, he indicated "severe misgivings" about the BOL sterilizing process.

Bausch & Lomb has filed extensive data with the FDA on the use of its asepticizer to kill any growing microorganism including bacteria. After a careful and lengthy review, the FDA approved this method as being effective.

2. Mr. Charles also was reported to have found a crack in the lens that he examined and supposedly concluded that it was "fairly obvious that surface cracks and flaws are developing" in soft contact lenses and that they are capable of trapping nutrients in which bacteria can grow.

BOL indicates that it has also conducted microscopic examinations of both new and used Soflens. They say that their studies show no evidence of lens degradation or surface cracks, fissures, or scratches.

3. Dr. Neal Bailey of Ohio State was reported to have expressed concern about protein coatings and red spots which developed on some lenses.

The protein coatings have developed only in a small number of incidents with patients who secrete unusually high amounts of mucus in tears. This protein build-up can be prevented, we

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understand, in all cases when lenses are cleaned properly. Lenses which become clouded due to this coating should be replaced under warranty or insurance. The red spots were simply rust, and according to BOL provided no safety hazard.

4. Dr. Bailey was also reported to have said that the Soflens has a life "approaching one year."

As we have pointed out before, the BOL Soflens is believed to have a long life. Some patients have been wearing Soflens for more than three years.

A report such as that issued by the Wall Street Journal on Friday naturally raises concern as to the possibility of an FDA recall of the Soflens or other adverse regulatory action. We consider the possibility of any action by the FDA to be low. The FDA investigated the Soflens, both in terms of safety and efficacy, with extreme care before permitting BOL to market it. The Soflens was released for marketing, as is true with other drugs, only after the FDA was completely satisfied that it was both safe and effective. It is important to emphasize that there were no problems of eye infection attributed to the Soflens during its extensive clinical testing. Insofar as we can determine, there have been no health or safety problems with the Soflens since BOL began to market it. Many medical experts believe that this is perhaps the best indication of the Soflens' safety.

In spite of the fact that the weight of informed medical opinion seems to indicate that safety and durability are not problems with the Soflens, we think that it is important for investors to recognize the potential negative impact of such publicity on consumer and professional demand for Soflens in the short term. This article follows another rather negative article on the Canadian government's concern about the safety of soft contact lenses being marketed there. Such extensive publicity given to the questions of bacterial contamination, infection, and fragility could slow the acceptance of Soflens. We continue to believe that Soflens has broad appeal and that its long-term potential is substantial. Even with these negative articles we think that sales in 1972 will reach our original projections, and we continue to estimate 1972 earnings of $5.00-$7.00 per share. However, we do not think that investors should necessarily expect a smooth progression of quarterly earnings through the year. Seasonal factors in the contact lens business, plus initial distribution overseas and the introduction of Soflens for those who are far-sighted and who have had cataract operations should result in the largest earnings coming during the summer months. It is possible that earnings in the first and second quarters of 1972 will not show pronounced gains over earnings in the fourth quarter of 1971 as a result of slower seasonal demand

for contact lenses and the effects of this recent adverse publicity. Tentatively, we think that first quarter earnings should be about equal to the $1.00 per share that we have estimated for the fourth quarter of 1971. Earnings were $0.27 per share in the first quarter of 1971.

We continue to regard the stock as attractive for capital appreciation based on our continuing conviction, that world-wide, Soflens has a broad potential market that can be tapped during the next several years. We recognize that this most recent publicity can affect short-term performance of the stock. However, we consider the substantial long-term potential of Soflens to be the much more important investment consideration, and, hence, we continue to recommend purchase.

J. Gary Burkhead

ALL OFFICE WIRE FEBRUARY 09-1972

BAUSCH AND LOMB INCORPORATED - BOL -
152 1/2 - 0.84 DIV 0.45 DYD -

OUR NEAR-TERM PRICE THINKING HAS CHANGED SOMEWHAT AS A RESULT OF RECENT DEVELOPMENTS. WE NOW THINK THAT IN THE SHORT TERM IT MAY BE UNREALISTIC TO EXPECT MUCH MORE THAN A PRICE EARNINGS MULTIPLE OF 30 - OR 30 - IN VIEW OF THE UNCERTAINTIES ARISING FROM THE FOLLOWING FACTORS

1. RECURRENT NEGATIVE PUBLICITY WHICH QUESTIONS BOTH THE SAFETY AND EFFICACY OF SOFT CONTACT LENSES.

2. PERIODIC CONCERN THAT THE FOOD AND DRUG ADMINISTRATION /FDA/ MAY IMPOSE RESTRICTIVE REGULATORY CONTROLS.

3. THE POSSIBILITY OF COMPETITION.

AS WE HAVE OUTLINED IN SOME DETAIL PREVIOUSLY THESE CONCERNS DO NOT SEEM TO BE SUPPORTED BY THE AVAILABLE EVIDENCE. MANY EXPERTS BELIEVE THAT THE SAFETY OF THE SOFLENS HAS BEEN WELL DOCUMENTED IN THE COMPANYS EXTENSIVE CLINICAL INVESTIGATION AND FIELD EXPERIENCE SINCE COMMERCIAL INTRODUCTION. TO DATE - WE ARE STILL NOT AWARE OF ANY SIGNIFICANT PATIENT DIFFICULTIES ATTRIBUTED TO THE SOFLENS. SIMILARLY IT HAS PROVEN EFFECTIVE IN CORRECTING A WIDE RANGE OF REFRACTIVE ERRORS. PARTICULARLY SINCE THE NEW SERIES OF LENSES WERE INTRODUCED /IN MAY/. FURTHERMORE - THE COMPANY SAYS THAT IT HAS HAD NO INDICATION FROM THE FDA - EITHER DIRECT OR IMPLIED THAT IT IS CONSIDERING MEASURES THAT WOULD AFFECT THE MARKET STATUS OF SOFLENS OR RESTRICT ITS SALE. COMPETITION WHILE IT HAS BEEN IN THE BACKGROUND FROM THE BEGINNING STILL APPEARS TO BE SOMETIME AWAY PERHAPS SEVERAL YEARS. MOREOVER - THERE ARE MANY INDICATIONS THAT THE SOFLENS HAS IMPORTANT ADVANTAGES OVER THE OTHER LENSES THAT ARE BEING TESTED - AND THAT ITS PATENT PROTECTION SHOULD KEEP ITS POSITION IN THE MARKET A PROPRIETARY ONE. NEVERTHELESS - WE THINK THAT IT MUST BE RECOGNIZED THAT THESE FACTORS - TAKEN QUALITATIVELY COULD HAVE A SIGNIFICANT RESTRAINING EFFECT ON INVESTOR PSYCHOLOGY.

IN OUR REASONING ON THE MULTIPLE IS CORRECT THE CURRENT PRICE PROBABLY ADEQUATELY DISCOUNTS 1972 EARNINGS AT ABOUT 28 TIMES THE MIDPOINT OF OUR 5.00-7.00 PER SHARE ESTIMATE RANGE FOR 1972. THEREFORE ANY SUSTAINED MOVEMENT IN THE PRICE OF THE STOCK MUST DEPEND ON EXPECTATIONS FOR 1973 AND BEYOND. WE THINK THAT IT IS TOO EARLY AT PRESENT TO DEVELOP ANY CONVICTION ON THE OUTLOOK THAT FAR OUT --PARTICULARLY IN VIEW OF THE CROSSCURRENTS WHICH SEEM TO BE AFFECTING THE CONTRIBUTION OF SOFLENS IN THE SHORT-TERM.

THERE ARE SEVERAL DEVELOPMENTS WHICH WE FIND ENCOURAGING FOR THE YEAR TERM

FIRST - BOL IS PREPARING TO INTRODUCE - IN [illegible] VISION FITTING PHILOSOPHY IN WHICH THAT CONTACT LENSES PROVIDE FOR PEOPLE WHO HAVE HAD CATARACT OPERATIONS - AND THE FACT THAT THERE ARE SOMETHING LIKE 300-000 - 400-000 CATARACT OPERATIONS IN THE UNITED STATES EACH YEAR.

SECOND - BOL IS PREPARING TO INTRODUCE A SMALLER FITTING KIT FOR PRACTITIONERS WHO HAVE RELATIVELY SMALL CONTACT LENS PRACTICES. THIS SHOULD BROADEN SUBSTANTIALLY THE POPULATION OF PRACTITIONERS AND PROVIDE SIGNIFICANT SALES AND EARNINGS DURING ITS ///SELL-IN///.

FINALLY - THE COMPANY HAS ENTERED OR WILL ENTER IN THE NEAR FUTURE SEVERAL IMPORTANT FOREIGN MARKETS - INCLUDING JAPAN - CANADA LATIN AMERICA AND EUROPE.

ON THE OTHER HAND - THERE ARE SOME NEAR-TERM INDICATIONS WHICH MAY NOT BE FAVORABLE. SOFLENS SALES IN THE U.S. APPEAR TO HAVE SLOWED IN RECENT WEEKS. THE REASONS FOR THIS SLOWDOWN ARE DIFFICULT TO JUDGE BECAUSE FEBRUARY IS THE SEASONAL LOW POINT FOR THE CONTACT LENS BUSINESS. THIS MAY BE JUST A SEASONAL LULL IN SALES. ON THE OTHER HAND THERE IS SOME EVIDENCE WHICH SUGGESTS THAT THE NEGATIVE PUBLICITY ABOUT SOFT CONTACT LENSES MAY HAVE HURT SALES TO BOTH CONSUMERS AND PRACTITIONERS. TO THE EXTENT THAT THIS HAS BEEN A DETERRENT TO SALES - IT MAY INDICATE A SLOWER RATE OF ACCEPTANCE THAN IMPLIED IN OUR FORECASTS.

THESE CROSSCURRENTS WILL PLAY A SIGNIFICANT ROLE IN OUR FIRST QUARTER COMPARISONS. IF THE APHAKIC LENSES ARE INTRODUCED EARLY ENOUGH IN MARCH - WE THINK THAT THERE IS A GOOD CHANCE THAT EARNINGS WILL MATCH THE 1.02 PER SHARE EARNED IN THE FOURTH QUARTER OF 1971 IF NOT - EARNINGS FOR THE QUARTER MIGHT BE CLOSER TO 0.80-0.85 PER SHARE.
EARNINGS WERE 0.27 PER SHARE IN LAST YEARS FIRST QUARTER /BEFORE RESTATEMENT TO REFLECT THE ACQUISITION OF BUSHNELL OPTICAL/
HOWEVER - FOR THE YEAR AS A WHOLE - WE EXPECT THE POSITIVE FACTORS WILL BE PREDOMINATE AND WE CONTINUE TO ESTIMATE 5.00-7.00 PER SHARE.

IT MAY TAKE ANOTHER THREE OR FOUR MONTHS AND POSSIBLY EVEN A LITTLE LONGER TO DETERMINE WHICH OF THESE CROSSCURRENTS IS THE MORE RELIABLE INDICATOR OF THE OUTLOOK FOR 1973 AND - POSSIBLY BEYOND.
DURING THIS PERIOD - WE THINK THAT PRICE PERFORMANCE COULD BE LIMITED.
IN VIEW OF THIS ASSESSMENT OF THE PROSPECTS FOR YEAR-TERM PRICE ACTION - WE DO NOT BELIEVE THAT THE STOCK SHOULD BE BOUGHT BY AGGRESSIVE SHORT-TERM INVESTORS AND WE ARE REMOVING THE STOCK FROM THE ///RECOMMENDED LIST/// UNTIL IT IS POSSIBLE TO ASSESS THE OUTLOOK FOR 1973 WITH GREATER CERTAINTY.

WE CONTINUE TO BELIEVE THAT THE ULTIMATE MARKET FOR THE SOFLENS IS A VERY LARGE ONE AND THAT BOL CAN CONTINUE TO BE SUCCESSFUL IN TAPPING IT.

HENCE WE STILL THINK THAT THE STOCK HAS GOOD LONG-TERM POTENTIAL.

J. GARY BURKHEAD

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Softens Spreads Excitement— What Will It Do for Profit?

By JOHN RUMSEY
Times-Union Business Editor

This is shaping up as a year to remember for Bausch & Lomb, Inc.—a year with severe disappointments, high hopes, an earthquake, maybe a new stock issue, and above all, that intriguing question mark, the Soflens.

Officials didn't try to conceal their enthusiasm about the Soflens at the annual meeting of shareholders yesterday, but they clung to their refusal to estimate what it may do for the company's profits. The estimates of other people have helped propel B&L stock upward about 60 per cent in recent weeks, and it's about triple last year's low.

"Without the Soflens, we should just about hold our own against last year's $1.83 a share," said Daniel G. Schuman, executive vice president for finance and administration.

B&L's other ophthalmic and consumer business will be a little better than last year's, but its scientific instrument business will be worse, he said. The instrument business in the fiscal quarter ended March 31 showed "even more weakness" than in the preceding quarter, helping to account for a 25 per cent drop in profits compared with year-ago figures.

The analysts in the front row, as well as the rest of the small turnout of 40 or so at the Holiday Inn Downtown, seemed most interested in the Soflens.

"This will be the only ophthalmic product I know of where a patient wanting a product walks into the office and walks out wearing the product," said Jack D. Harby, executive vice president for operations. "We think this will be tremendously exciting from the patients' point of view and from the professions' point of view."

The professional eye care specialists—ophthalmologists and optometrists—will be invited to seminars in major cities

Schuman Harby

across the country, starting in late May, to see how the Soflens is handled. Only then will B&L disclose Soflens prices, although it has said they'll be higher than the prices on conventional hard plastic lenses, which B&L does not make.

The seminars will last three hours or so, Harby said. A fee will be charged. "We expect acceptance will be overwhelming," he said. "Most important, they'll put the lens on themselves, on each other . . . We'll have our stable of [illegible] that we've kept waiting all this time."

The long-delayed lens has been used only by eye care specialists who have participated in the clinical testing program which led finally to government permission for marketing. B&L provided these men with free instruction lenses and accessories. From now on, Harby said, they'll be paying for what they get.

There are about 30,000 eye care offices in the country, Schuman said, of which perhaps half handle hard plastic contacts. B&L hopes that many more than half will handle the Soflens, which the company says can be fitted more quickly and easily and with much greater likelihood of acceptance by the patient. The doctors will start learning in the months ahead how profitable it may be.

The company will ship "inventory kits," each containing 72 lenses, to specialists who decide to handle the Soflens. The kits themselves "could represent quite an impact on our earnings per share this year," remarked Schuman.

This impact is expected to appear in the third and fourth fiscal quarters, but not in the second. The first quarter results, disclosed at the meeting, were earnings of $760,000 or 27 cents a share on sales of $31,028,000, down from $1,008,000 or 35 cents a share on sales of $31,564,000 in the first quarter of 1970.

Schuman said B&L has invested about $3.3 million in the Soflens program. It charged expenses off as they were incurred through 1970 but began deferring them at the start of this year. This deferral helped first-quarter results, but Schuman said it was largely offset by non-recurring costs connected with the new plant in Garrett County, Maryland.

Frank P. Buza of Rogers City, Mich. a shareholder who had many questions, asked whether B&L would consider licensing the Soflens to other companies. William W. McQuilkin, president, replied that it would not be "in the best interests of shareholders."

Other points brought out at the meeting included:

B&L may pay off about $20 million in short-term debt later this year by issuing new common stock or some kind of convertible security. This would not mean much dilution of the present stock, Schuman said.

B&L has not yet taken a government loan arranged for last year at 7¼ per cent to help finance its new lens plant in Maryland. This rate is high by current standards so B&L may resort to other financing.

Applied Research Laboratories, subsidiary makers of spectrochemical analytical systems, had a "very disappointing" first quarter after holding up well in the face of the recession. Assorted problems, including some earthquake damage in California, hurt ARL but results for the full year are expected to be up from 1970's.

The Ophthalmetron, an instrument to make eye examinations quicker and easier, will be marketed by the end of this range. It eliminates some of the routine chart-reading for patients and can be operated by a nurse, although an eye care specialist will still have to examine a patient before glasses can be prescribed.

B&L officials declined to comment on questions about how high the stock may go or whether it might be split.

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Another Firm Applies to FDA

Griffin Laboratories, Inc., of Buffalo, a potential competitor of Bausch & Lomb, announced it has filed an application with the Food and Drug Administration to market its soft contact lens in the United States.

Griffin reportedly is already marketing its soft lenses in Canada, Western Europe and Australia.

National Patent Development Corp., the New York firm which licensed its soft lens process to Bausch & Lomb, has filed suit in federal court against Dr. Alan Isen, a former employe, charging him with stealing its trade secrets.

Griffin in turn has filed suit against National Patent, seeking to have its patent on the water-absorbing plastic invalidated.

Griffin, whose stock is closely held, is to be acquired by Frigitronics, Inc., under an agreement not yet consummated.

NEWS from BAUSCH & LOMB ROCHESTER, NEW YORK 14602
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BAUSCH & LOMB REPORTS 10% EARNINGS GAIN, RECORD SALES IN SECOND QUARTER

For release: IMMEDIATE

Contact: BILL KELLAM, EXT. 285

ROCHESTER, N.Y., July 21, 1971--Bausch & Lomb today reported net earnings of $1,294,000 for the second quarter ended June 25, up 10% over the $1,177,000 recorded last year.

Earnings per share of common stock, after preferred dividends and based on the average number of shares outstanding, assuming full conversion of debentures, were $.45, compared to $.43 per share in 1970.

Consolidated sales for the second quarter were a record $37,003,000, an increase of [illegible]% over the figure of $35,181,000 recorded in the same period of 1970.

Net sales for the six months ended June 25 were a record $68,030,000, up 2% from the figure of $66,746,000 recorded in the same period of 1970.

Net earnings for the first six months of 1971 were $2,054,000, or $.72 per share, a decrease of 6% compared to $2,186,000, or $.79 per share, in 1970.

Ophthalmic and consumer products sales continued the growth patterns of the first quarter and foreign sales remained at satisfactory levels; but scientific instrument business failed to show any improvement.

The introduction of the revolutionary new SOFLENS™ Contact Lens (polymacon) to eye care professionals in the Far West will be completed this week. The national marketing program is being accelerated so that introductory symposiums for the professionals will have been conducted in the major population centers of the country by the end of November.

Financial Summary:

	For the Quarter Ended:	
	June 25, 1971	June 26, 1970
Sales	$37,003,000	$35,181,000
Net Earnings	1,294,000	1,177,000
Earnings Per Share	$.45	$.43

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B&L - 2nd Quarter - Page 2

	For the Six Months Ended:	
	June 25, 1971	June 26, 1970
Sales	$68,030,000	$66,746,000
Net Earnings	2,054,000	2,186,000
Earnings per Share*	$.72	$.79

*After preferred dividend requirement and based on average number of shares outstanding (2,727,912 shares in 1971 and 2,694,148 shares in 1970), assuming full conversion of the convertible debentures.

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Bausch & Lomb Forecasts Profits

8/16

ROCHESTER, N. Y. (Reuters) — The impact of Bausch & Lomb, Inc.'s new Soflens will enable the company to show higher earnings for the third quarter compared with last year's 39 cents a share, Executive Vice President Daniel G. Schuman said in an interview.

Schuman declined to say how much of an improvement there would be. He said Soflens sales had "very little" impact on second-quarter earnings of 45 cents vs. 43 cents a share, which brought six months net to 72 cents vs. 72 cents a share.

Schuman disclosed that the company expects to go to the market sometime in the fourth quarter with a common stock or convertible debenture offering to raise additional capital "to clean up our short term debt." He did not elaborate.

Schuman declined to estimate earnings for the entire year though he said the company would have had a flat year without the Soflens sales. He would not comment on some analysts' projections of $1.75 to $1.90 a share for the company.

Last year Bausch & Lomb earned $1.53 a share, down from the previous year's $1.85.

Sales for ophthalmic and consumer products aside from the Soflens have been going very well so far this year, Schuman said, though there has been a continuing fall off in scientific instrument sales in the U.S. Sales of scientific instruments in Europe have increased over last year, he said.

The company only recently began marketing the Soflens by holding seminars for opthalomologists, opticians and optometrists in major population centers.

With one exception so far, the seminars have been held only in the Far West -- Portland, Seattle, San Francisco, Los Angeles, Salt Lake City and Phoenix.

Last week Bausch & Lomb held its first seminar on the East Coast -- in Rochester -- and will hold seminars in Pittsburg, Detroit, Cleveland and other cities in the East and Midwest beginning the week.

The company's current schedule calls for seminars to be completed in all the major population centers in the country before the end of November.

Schuman declined to comment on the company's projections for the total market for the Soflens. He acknowledged that Bausch & Lomb had made private projections of the total market but said he would rather not make a public statement on the subject.

The Soflens is made from a liquid absorbing plastic licensed by National Patent Development Corp. to Bausch & Lomb for marketing in the Western Hemisphere.

Schuman said negotiations with National Patent for the rights to sell the product in Western Europe, Japan and Asia were "reasonable close" to an agreement.

DEFENDANT'S EXH. No. 64
Identified in ID 3/22/96

Infection by Soft Contact Lenses Prompts Seizure of 1,300 'Bootleg' Sets in California

A WALL STREET JOURNAL News Roundup

California health officials said they seized 1,300 sets of soft contact lenses after some of the lenses were found to be contaminated with eye-damaging bacteria.

The seizure led industry officials to voice the fear that the sale of "bootleg" soft contacts is becoming widespread in the U.S. Some officials blamed the Food and Drug Administration for not taking sterner measures to prevent the sale of potentially dangerous lenses.

Soft contact lenses are made of a water-loving polymer, a type of plastic, that clings to the eye by attracting moisture from the eye.

The seized lenses were sold illegally by two California companies, the officials said. After the seizure the two companies also agreed to recall 320 lens sets already in the hands of opticians.

Bausch & Lomb's Fears

Bausch & Lomb Inc., which makes the only soft contacts approved by the FDA for sale in the U.S., said its lenses weren't involved in the seizure. Daniel G. Schuman, chairman, said he was fearful that the selling of contaminated soft contacts "will confuse the public" about the safety of the Bausch & Lomb lens.

The soft contacts made by Griffin Laboratories Inc., a subsidiary of Frigitronics Inc., also weren't among those seized. Allan Isen, Griffin's president, said the company has "no association" with the seized lenses. Griffin has applied to the FDA for permission to sell its soft contacts in the U.S. At present it can only supply them to doctors on an experimental basis with an FDA permit.

Bennett Ward, supervisor of drug inspection for the California State Health Department said the companies involved in the seizure were Urocon Inc. of Los Angeles and Kontur Kontact Lenses Inc. of Richmond, Calif. He said the companies appeared to be ignorant of the state's laws governing the sale of soft contacts. He added that a decision about possible legal action hasn't yet been made.

The contaminated lenses were discovered by Dr. Albert T. Milauskas, a Palm Springs, Calif., ophthalmologist. He reported that the lenses made by one of the two companies had infected the eyes of one of his patients. FDA and state health investigators then were called in.

Many Such Ventures

Mr. Ward said that neither company had a state or FDA permit to supply the lenses to doctors for experimental testing. Therefore, he said, they were being sold illegally. But, said Mr. Ward: "I don't think there was any criminal intent on the part of the companies involved. I think it's a case of ignorance of the law." Many companies believe that permits aren't needed for the sale of soft contacts, he said. Permits have never been required for the sale of traditional, or hard, contact lenses.

One optical company official, however, said that FDA officials are aware of many similar cases of soft contacts being sold illegally throughout the U.S. "I myself have sent the FDA reports on six or seven different guys, and we're hearing of a new one every week."

Said another official, "we're all upset that the federal government isn't taking action against these people."

An FDA spokesman conceded that there had been reports "of small entrepreneurs in the Midwest cranking these things out." However, he said, the FDA's authority over the intrastate sale of soft contacts is "hazy." Also, he said, the FDA doesn't have the manpower to police their sale effectively.

Mr. Schuman of Bausch & Lomb said the company is particularly upset about the illegal sale of soft contacts. He said they are creating "confusion" about the Bausch & Lomb lenses, which are marketed under the trade name Soflens. "The problem is that this name has become generic. Thus when another lens is referred to as a soft lens it inevitably becomes confused with our lens," he said.

Dr. Milauskas, in a speech prepared for a meeting of ophthalmologists in Las Vegas this week, reported that the main infecting germ on contaminated soft contacts is a bacterium that is resistant to usual antibiotic treatment. Besides producing pus and irritation, he said, the infection also can cause sight-threatening ulcers on the cornea.

Dr. Milauskas also said contaminated contacts made by a third California company still haven't been seized by health authorities. As a result, he claimed, contaminated lenses still are being sold in the state and worn by unsuspecting patients. He charged that soft contacts have been rushed to the market before the development of "strict quality controls for the manufacture, shipping, storage and cleaning of these lenses."

Sterilization Vital

Dr. Henry Knoll, Bausch & Lomb's senior scientist, said in an interview yesterday, that without proper sterilization procedures a soft contact lens could become contaminated through handling when bacteria on the skin is transferred to the lens. Even bacteria in the air and in water can affect the lens, he said.

The Bausch & Lomb lens, he observed, is sterilized before shipment by a 20-minute exposure to steam at 121 degrees centigrade. This removes the danger of contamination. (The Griffin lens is sterilized in a hydrogen peroxide solution.)

Dr. Knoll also said that improperly sterilized soft lenses can be contaminated by fungi, which also can be transferred from the skin. He said that it's impossible for bacteria to actually enter the lens material because a bacterium is many times larger than the molecules that make up the polymeric material.

However, Dr. Knoll said, it's possible for fungi to enter the material by sending out root-like structures into the material rather like the roots of a tree breaking through rock.

Griffin's Mr. Isen said that much of the illegal lens material on the market is penetrated by bacteria because of the different structure of the material. This makes the material doubly dangerous to the wearer, he said.

DEFENDANT'S EXH. No. 63
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Page A

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WASHINGTON, D.C.
STAR
D. 305,297 — S. 345,019
WASHINGTON, D.C. METROPOLITAN AREA

SEP 24 1971

Soft Lens Developer Expanding Market, Uses

NEW YORK (DJ) — National Patent Development Co. expects to license Bausch & Lomb Inc. to make and market the new soft contact lens in the United Kingdom and Europe, Jerome I. Feldman, National Patent's president, said today.

National Patent originally granted Bausch & Lomb an exclusive license to make and market the new lens in the Western Hemisphere, Israel and South Africa. However, Feldman said, a European license would be "non-exclusive."

This he said is because National Patent and Smith & Nephew Associated Companies, Ltd. of London recently formed a joint venture company, Hydron Lens Ltd. also to make and market the soft lens in the United Kingdom and the rest of Europe with the exception of France.

Hydron Lens will begin marketing soft contacts within six months, Feldman said, including a lens that can be worn by people suffering from corneal astigmatism, a condition in which the eye has surface bumps. Bausch & Lomb's own soft contacts, the only such lenses approved by the FDA for marketing in the U.S., cannot be worn by people with a significant amount of astigmatism.

The soft lens is made of an [illegible] polyer, a type of plastic [illegible] has the ability to cling to [illegible] face of the eye by absorbing moisture from the eye.

Feldman said since Bausch & Lomb has only been marketing its soft contacts for a few months "we will get just minimum royalties this year." Next year, he said, the Bausch & Lomb contract "will be a major contributor to earnings."

Under the contract, Bausch & Lomb pays National Patent 50 percent of the net profit on the lenses until 1992.

Feldman said the company expects to show a profit this year for the first time in its 11-year history.

He said he couldn't forecast earnings but he referred to analysts' reports the company will earn 50 cents a share for 1971 and said "I see no reason to argue with that." Feldman said 1971 earnings will include a non-recurring gain from sale of securities.

For 1970, the company had a net operating loss of $217,307 which was reduced by a $53,000 extraordinary gain. Sales for 1970 were $205,271. Feldman said sales for 1971 "will be at least two times" higher than 1970 sales.

He said the company is beginning to profit from "a siege of research" into the uses of the lens material which is trade-named Hydron. He said a joint venture company is beginning to market Hydron on fog-free bathroom mirrors and ski and work goggles. Another joint venture, in Japan, may begin supplying the coating on fog-free rear windows for automobiles. "Within six months we're hopeful that Japanese cars will have hydron-coated windows," he said.

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WALL STREET JOURNAL
CLEVELAND, OHIO
D. 106,800

OCT 12 1971

Heard on the Stree

By Dan Dorfman

The soft lens is starting to bear fruit for Bausch & Lomb.

Daniel G. Schuman, chairman, indicates third period net rose about 50% to "the 60-cent-a-share area" from the year-earlier $1.1 million, or 39 cents a share. He adds that the quarter, because of a poor performance in the scientific instruments business, would have been down without the soft-lens contribution. Although he declines to divulge the exact contribution from the soft lens, Mr. Schuman describes as "reasonable" some Wall Street estimates of about 25 cents a share in soft-lens business in the third period—despite the fact that it hasn't been distributed nationally. He estimates overall third period sales at $37 million to $38 million, up from the year-earlier $33.4 million.

There have been rumors of an equity offering by Bausch & Lomb sometime after the announcement of third quarter results. Mr. Schuman confirms the company is thinking along such lines. But he says it's unlikely to occur before the first quarter of 1972. "Our present thinking is about $20 million to $25 million in equity financing to clear up short-term borrowings of roughly the same amount which the company will have at year-end," Mr. Schuman says.

WALL STREET JOURNAL
CHICAGO, ILL.
D. 362,400

OCT 12 1971

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WALL STREET JOURNAL
SPRINGFIELD, MASS.
D. 249,206

OCT 12 1971

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WALL STREET JOURNAL
WASHINGTON, D. C.
D. 192,940

OCT 12 1971

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NEWS from BAUSCH & LOMB ROCHESTER, NEW YORK 14602
(716) 232-6000

BAUSCH & LOMB REPORTS THIRD QUARTER EARNINGS UP 57%

For release: IMMEDIATE

Contact: BILL KELLAM, EXT. 285

Rochester, N. Y., Oct. 19, 1971--Bausch & Lomb reported net earnings for the third quarter ended Sept. 24 of $1,686,000 or $.61 a common share, up 57 percent over last year's figures of $1,076,000 and $.39 a share.

The announcement was made by Daniel G. Schuman, chairman of the Board, and Jack D. Harby, president.

Consolidated sales for the period were a record $37,506,000, up 12 percent over the 1970 figures of $33,400,000.

Net earnings for the nine months ended Sept. 24 were $3,740,000, an increase of 15 percent over the $3,262,000 recorded in 1970. Earnings per share for the 1971 period were $1.33 versus $1.18 in 1970.

Consolidated sales for the first nine months of 1971 were a record $105,537,000, up five percent over the figure of $100,146,000 achieved in the same period of 1970.

Mr. Schuman and Mr. Harby reported that sales of the new SOFLENS™ Contact Lens made a very significant contribution to third quarter earnings. Without SOFLENS Contact Lens, earnings would have been moderately below the results of the third quarter of 1970 due to the continuing weak demand for scientific instrument products. Sales of ophthalmic and consumer products continued to show good increases over 1970.

(MORE)

DEFENDANT'S EXH. No. 66
Marked for ID 3/26/76
Evidence

The introduction of SOFLENS Contact Lens to the eye care professions has proceeded as planned and will be completed on a nationwide basis by the end of November. Sales of the product during this initial stage of the marketing program have been most satisfactory.

Implementation of plans for marketing the lens outside the U. S. continues. Introduction of the lens to eye care professionals will begin in Canada in November and in South America soon after. In early 1972, initial marketing of the lens is expected to begin in Europe, Japan and other Far Eastern countries.

FINANCIAL SUMMARY:

	THIRD QUARTER ENDED	
	Sept. 24, 1971	Sept. 25, 1970
Sales	$37,506,000	$33,400,000
Earnings	1,686,000	1,076,000
Earnings per share*	$.61	$.39
	NINE MONTHS ENDED	
Sales	$105,537,000	$100,146,000
Earnings	3,740,000	3,262,000
Earnings per share*	$1.33	$1.18

*After preferred dividend requirement and based on average number of shares outstanding (2,728,839 shares in 1971 and 2,696,390 shares in 1970), assuming full conversion of debentures.

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Pages 2

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Continuing Controversy

'Soft' Contact Lenses Probed by Canada; Bacteria Said to Have Been Found in Some

By DAVID BRAND
Staff Reporter of THE WALL STREET JOURNAL

OTTAWA—In the latest chapter of the continuing medical controversy surrounding "soft" contact lenses, the Canadian government's Food and Drug Directorate has made some soft lenses the subject of a "high priority" investigation.

According to Dr. Jeffrey Bishop, head of the directorate's Drug Advisory Bureau, the investigation was begun because of "concern" over reports reaching it of some soft contact lenses contaminated with a type of bacteria that has been known to cause eye infections under certain conditions.

Unlike in the U.S., soft contact lenses are currently sold in Canada without a medical prescription.

The lenses under Canadian investigation are produced by Bausch & Lomb Inc., Griffin Laboratories Inc. (a subsidiary of Frigitronics Inc.) and 12 small concerns. In the U.S., only the Bausch & Lomb lens has been approved by the Food and Drug Administration for sale on a prescription basis.

Canada's FDD, Dr. Bishop says, is particularly concerned with research by Alpha Charles, a microbiologist at Ontario's University of Waterloo. Mr. Charles has produced photographs of a Griffin lens that, despite sterilization, had bacteria on the surface and inside the lens and microscopic cracks and craters on the lens surface.

Ineffective Sterilization?

The Canadian government is also examining the research of Dr. J. F. Morgan, associate professor of ophthalmology at Queen's University, Kingston, Ontario. Dr. Morgan asserts that five of his patients are able to keep their Griffin lenses free of bacteria despite the fact that recommended sterilization techniques have been closely followed by the patients.

"We are concerned by the possibility that these (soft contact) lenses are not being stored or used properly by the consumer," says the FDD's Dr. Bishop. But regardless of who's at fault, Dr. Bishop says, "if the lenses are found to be hazardous, the FDD has the power to seize them and keep them off the market."

In the U.S., officials of Bausch & Lomb and Griffin yesterday said they welcomed the Canadian moves but said they were confident their products were safe.

The Canadian research and the attendant government investigation will inevitably add more fuel to the heated medical debate that began almost immediately following the U.S. introduction of soft lenses early this year. Certainly, backers of the product aren't lacking. The new lenses, made of a type of water-absorbing plastic, stay soft and supple when worn because they absorb moisture from the eye; proponents give this quality of absorption pro-

Many ophthalmologists, furthermore, say that soft contact lenses are particularly beneficial in the treatment of certain eye diseases. The lens, they say, acts as a type of bandage by wrapping itself around the injured cornea.

Possible Contamination?

But the issue of possible bacteria contamination began to grow in the months following the introduction of soft lenses on the market. Last September, California health officials seized 1,300 sets of soft lenses (neither the Griffin nor the Bausch & Lomb lens was involved) after discovering the lenses were contaminated with pseudomonas aeruginosa (a common bacterial cause of wound infections and urinary tract infections). And the following month, a story in this newspaper reported the growing behind-the-scenes medical controversy over whether the Griffin lens was vulnerable to contamination by fungi and certain bacteria that might cause eye infections.

Following The Wall Street Journal story, Allan Isen, Griffin's president, declared that "a review of the clinical case studies of the medical investigators of the Griffin lens doesn't disclose even one case of bacterial infection of the eye due to the Griffin lens where procedures established by the company have been followed."

The Griffin lens, however, is a subject of the Canadian investigation. Indeed, all of the research work done to date by the University of Waterloo's Mr. Charles has been with the Griffin lens.

Mr. Charles' examination has involved both new and used Griffin lenses. In a recent interview, he described his examination of the surface of a new Griffin lens under a scanning electron microscope that magnified the lens 4,880 times. A detailed photograph of this magnification, Mr. Charles says, shows a surface that's criss-crossed by scratches. (Some people believe these scratches are produced by Griffin's method of grinding its lenses.)

Mr. Charles' next step, he says, was to examine a Griffin lens that had been worn for several months. The used lens, he says, was obtained from an optometrist whose patient had developed eye inflammation after wearing the lens.

According to Mr. Charles, an electron microscope photograph of the used lens, magnified 4,400 times, shows wide fissures and deep craters on the lens surface. Furthermore, he says, the lens surface was contaminated with bacteria—despite the fact that the lens had been treated with hydrogen peroxide. Mr. Charles says he has identified the bacteria as pseudomonas aeruginosa.

Mr. Charles says he then cut away surface layers of the used Griffin lens and magnified the lens' interior 4,444 times. Once more a picture was taken, and he says the resulting pho-

An Average Life of Six Months

Although Mr. Charles says he can't explain why there were only scratches on the new lens but fissures on the older one, Queen's University's Dr. Morgan says he has noticed that the fragility of the Griffin lens appears to increase with age. Griffin lenses worn by seven of his patients last year had an average life of six months, Dr. Morgan says; after six months, the lenses began to tear as they were put into the eye.

Mr. Charles says he is also "at a loss" to explain how bacteria got into the lens' interior or why the lens resisted sterilization. In an attempt to answer these questions, he says he studied the various methods of sterilizing the Griffin lens—without conclusive findings.

Griffin Laboratories recommends that its lens be immersed in hydrogen peroxide then soaked in a mixture of saline solution and sodium bicarbonate, and finally soaked in plain saline solution. (The Bausch & Lomb lens is sterilized by heating in saline solution. While Griffin claims its lens can also be boiled, the company nevertheless says it's dubious about the efficacy of this method.)

There are, however, two other sterilizing solutions recommended in Canada by Griffin for its lenses. One is called Hexaphen and is made by Barnes-Hind Pharmaceuticals Inc., Sunnyvale, Calif. Another is called Flexol and is made by Burton-Parsons & Co., Washington, D.C. (Burton-Parsons, together with the Ontario Health Department, is financing Mr. Charles' study.) Both solutions are available in Canada, but neither has been approved by the FDA for sale in the U.S.

Flexol and Hexaphen, Mr. Charles says, "will work to a certain extent, but a person's personal hygiene is very important." He adds, however, that hydrogen peroxide is "not an adequate sterilizer." The Griffin lens, he says, can "concentrate chemicals in solution" inside the lens; therefore, he says he fears the hydrogen peroxide could be released by the lens onto the eye and possibly cause cornea burns.

A Doctor Is Disillusioned

Mr. Charles may have his doubts, but Dr. Morgan's views are more adamant. "I've become disillusioned with all of the Griffin sterilizing techniques," Dr. Morgan says. His disillusionment, he says, stems partly from the result of a research program with five patients, all with healthy eyes, who were early this year fitted with Griffin lenses as a substitute for glasses. All have had sterilization problems.

Cont next page

Dr. Morgan says his patients have been using all three recommended sterilization techniques and have brought their lenses to him for examination every two or three weeks. On many of these visits, Dr. Morgan says, pseudomonas have been found—not only on the lenses themselves, but also in the lens cases and even in some bottles of sterilizing solution. (Pseudomonas have not been discovered in the hydrogen peroxide bottles, however; and in the case of Flexol, Dr. Morgan says his patients used a solution that has since been replaced by one that is claimed by the manufacturer to have greater bacteria-killing properties.)

Could the patients have been careless in handling their lenses, or could they simply have forgotten to sterilize them? Dr. Morgan says no. "They're all intelligent people," he says. "We know they were doing what they were told."

Dr. Morgan's patients now are using only hydrogen peroxide. "It's a useless technique, but it's the best of the three," he says. Furthermore, Dr. Morgan says he hasn't fitted any new soft lenses since last August. "I'm not happy fitting these lenses on otherwise healthy eyes," he says.

The use of soft contact lenses in the treatment of diseased eyes is also embroiled in controversy. Although many individuals are wearing the lenses for their supposed healing properties, the Canadian government doesn't allow manufacturers to promote their soft lenses as a treatment for eye diseases. (Indeed, this is the only restriction placed on the sale of the lenses in Canada.) The FDD's Dr. Bishop, however, says despite the promotional restriction many doctors are prescribing the lenses "at their own risk" for the treatment of diseased eyes.

According to Dr. Bishop, the FDD is particularly concerned over the health-use issue since, he says, all reports to the directorate of eye infections among soft lens wearers have involved people who had eye problems prior to use of the lens. It isn't known, however, whether these subsequent infections were caused by contaminated lenses.

'This Risk Is Tolerable'

Dr. Morgan, whose data are being used in the FDD investigation, explains that it's much easier for a bacterium to attack a diseased eye than a healthy one. The healthy eye, he says, is protected by a tough layer of tissue (the epithelium) that has tremendous resistance to bacteria; if the epithelium is broken, as in a diseased eye, bacteria are able to attack the underlying stroma, or supporting framework of the cornea.

The health-use issue has also been much discussed in the U.S., where Bausch & Lomb isn't allowed to promote its soft lenses for healing purposes. The company is permitted to sell its lenses solely as a replacement for glasses for healthy eyes.

As in Canada, however, many people in the U.S. are wearing soft lenses, on an experimental basis, for the treatment of diseased eyes. For example, Dr. Claes Dohlman, associate professor of ophthalmology at Harvard Medical School, has been working for the past two years on a research program fitting people who have diseased eyes with the Bausch & Lomb lens. "The benefits of the lens must be measured against the dangers," Dr. Dohlman says. "I feel this risk is tolerable."

Dr. Dohlman has thus far treated 180 cases. In half of these cases, he says, the soft lens has helped to cure the disease. But in eight cases the lens has led to further complications. Three of these patients, Dr. Dohlman says, developed serious eye infections and suffered "permanent eye damage" as a result of which they now have reduced vision.

According to Dr. Dohlman, the "risk" of using the soft lens arises from the fact that in order to treat eye diseases the lens often must be kept in the eye for several months at a time. This length of time, he says, may result in bacteria becoming trapped between the lens and the cornea and remaining immune from the therapeutic effects of tear flow.

Despite the current promotional restrictions affecting the marketing of the Bausch & Lomb lens in the U.S., Griffin Laboratories last week announced it had resubmitted an application to the FDA seeking approval to market its soft lens, called the "Griffin Bandage Lens," for "its therapeutic use in certain pathological eye conditions." A previous therapeutic-use application by Griffin was withdrawn by the company in mid-October following an FDA request for additional information.

Speaking of the Canadian inquiry, Allen Isen, Griffin's president, says "you could say that Griffin suggested to the FDD that an investigation would be a good idea." He says the company is concerned about small manufacturers of the lenses "not used to exercising controls."

He is critical of Dr. Morgan at Queen's University, "because he has never contacted any (Griffin) investigator in the U.S." He is also critical of Mr. Charles at Waterloo University because "I question his motives." He says, "What he has found is not new. Lenses can crack. Bacteria can get into cracks. But so long as the patient uses peroxide, nothing can happen."

Of Mr. Charles' photographs, he says, "He did not identify whether it (the bacteria) was viable. It may or may not have been pseudomonas."

At Bausch & Lomb, Daniel Schuman, chairman, says he welcomes the FDD investigation. He also blamed contamination reports on lenses made by small companies, which he describes as "imitators." He says, "If the product isn't made properly or the material isn't of the proper kind there could be problems."

He stresses that Bausch & Lomb doesn't have a research program in Canada for the therapeutic use of its soft contacts in diseased eyes.

RRR/70

Marked for ID 3/26/76
Rec'd in Evidence
Pages 1 of 1

0370

TO: Mr. Daniel G. Schuman
Chairman of the Board
Bausch & Lomb, Inc.
635 St. Paul Street, Rochester, N.Y.
TELEPHONE: 716 - 232-6000

FROM: Lewis A. Sanders
Sanford C. Bernstein
717 Fifth Avenue, NY

DRAFT

BAUSCH & LOMB, INC. (BOL)

PRICE:

Sales ($ million)			E.P.S.			E.P.S.
1970	1971E	1972E	1970	1971E	1972E	12 mos. 9/71
$134	$154	$187-200	$1.53	$2.50-2.55	$4.50-6.00	$1.63

We continue to believe that Soflens sales and earnings are progressing quite well. Consistent with our earlier forecast, we estimate that sales approximated $6.0-6.5 million in the fourth quarter and earnings attributable to Soflens were in the area of $0.70/share. We believe inventory and related equipment sales were about $3.5-4.0 million (1200-1400 kits), while consumer sales approximated $2.3-2.7 million (27,000-31,000 pairs of lens and aseptors). This compares with our estimate of $3.0 million in Soflens sales in the third quarter of which we believe somewhat over $2.0 million was inventory related.

We are maintaining our earlier projection of $30-45 million in total Soflens and related sales for 1972. At present, we believe sales might be in the middle of the indicated range, with $35-38 million representing the most probable estimate. The achievement of our forecast implies a very considerable buildup in consecutive quarterly sales throughout 1972, primarily relating to rapidly expanding consumer sales domestically and the development of significant international sales (primarily inventory), particularly in the second half. Presented below are our assumptions as to the quarterly progression of Soflens sales and earnings.

1972 Quarterly Soflens Median Sales & Earnings Estimates
($ million)

	Domestic		International			
	Inventory	Consumer	Inventory	Consumer	Total	E.P.S.*
1st Qtr.	$2.2	$4.0	-	-	$6.2	$0.55-0.60
2nd Qtr.	2.2	5.0	$0.9	$0.1	8.2	0.75-0.80
3rd Qtr.	2.2	6.0	1.5	0.5	10.2	0.95-1.00
4th Qtr.	2.2	7.0	2.0	1.0	12.2	1.10-1.20
Total	$8.8	$22.0	$9.4	$1.6	$36.8	$3.35-3.60

* Prior to possible equity financing which net after interest savings should result in minimal dilution.

Our estimates of domestic inventory sales are at best very uncertain. However, we point out the following:

JAN 14 1972

DRAFT

SEC Ex. 16

BOL

(1) The company entered 1972 with a fairly small backlog of undelivered kits (possibly 200)

(2) The seminar impact is now over and the number of practitioners contacted per unit time will be substantially lower.

(3) The "easy" sales to practitioners who were anxious to get into the market are essentially accomplished, leaving a residual of what should be somewhat more reluctant potential customers.

(4) There has been significant negative publicity relating to lenses of other manufacturers, and very recently to Soflens which we believe will reinforce the wait and see attitude of many practioners in spite of the existence of a substantial amount of data which supports the efficacy and safety of the product.

(5) A limited number of practitioners have experienced difficulty in achieving success with the product and consequently have done a small amount of consumer volume to date. While this seems to be a practitioner-related problem rather than a product problem, it could, through word of mouth, intensify practitioner resistance to adopt Soflens in some cases.

We estimate that domestic inventory kit shipment will fall considerably in the first quarter, as compared to the fourth quarter of 1971, and will remain essentially level throughout 1972. In total, we expect kit sales to approximate 3,000 units or just under $9 million in domestic sales this year. It is possible, as mentioned in our earlier reports (September, October and December, 1971) that on balance some inventory depth beyond the basic kit may be accumulated this year, particularly when hyperopic power becomes available. This could add possibly as much as $2 million to domestic sales. However, at this moment we are not inclined to bet on its development. We reemphasize that these estimates represent only our best guess at what is clearly a very difficult forecasting problem and results may vary considerably from our estimates.

Consumer sales at this early point in time seem to be reasonably strong, but in our opinion not strong enough to support a revision of our earlier sales forecast for this year nor strong enough to warrant a revision of our inventory kit sales forecast due to competitive considerations by "on the fence" practitioners. Our surveys do not yet indicate signs of a very powerful buildup in consumer demand at certain "older" Soflens practices, either through referral or promotionally stimulated sources. We are somewhat disappointed by this, but believe it is probably still to early in the product's life cycle for this to have developed in a significant way. There is still much controversy in the professional community as to the safety and efficacy of soft lenses, in general, which we believe may be having a depressing effect on consumer referral demand.

It is also possible that the current high retail price may be impeding what otherwise would have been a much more rapid buildup in consumer demand. To this extent, we have noted lower retail prices in several areas, of late. Additionally, there may be some seasonality of demand for hard contact lenses (summer peak, winter trough) which would have had the effect of reducing the net available potential market for Soflens in recent months. Overall, we still believe that these depressing effects will diminish over time.

IOL

Our surveys also suggest that a high concentration of consumer sales are being made by relatively few practitioners. We believe this to reflect not only differences in the relative size of practices, but also to major differences in the relative success various practitioners are having with the product. As mentioned above, this seems to be a function of fitting techniques rather than product performance. It is reasonable to expect a gradual buildup of volume per practice as practitioners dispensing the product move along the learning curve of fitting technique. In sum, we hold to our earlier view that domestic consumer sales may approximate 250,000 pairs of lenses in 1972, at about $22 million in sales to EOL. Our estimates imply a buildup of volume from an annual rate of about 180 - 200,000 pairs in the first quarter to 320-330,000 pairs by the fourth quarter of this year.

The achievement of this sales forecast will require that Soflens significantly stimulate demand for contact lenses generally, so as to create substantially higher average volume per practice than now the case in hard contact lenses. As emphasized in earlier reports, we believe the unique characteristics of Soflens suggest that such stimulation of contact lens demand is likely to develop over time. However, it is not yet clear to us that this, in fact, has begun to occur in the considerable amount required to meet our forecasts. Our field surveys of practices now dispensing Soflens suggest that, to date, the product's safety and comfort has been quite good. However, as expected, acuity problems exist related both to astigmatic limitations, as well as other problems of a nature that we cannot identify precisely. Consequently, it appears that successful practices find that approximately two-thirds of their patients are successful with Soflens from an acuity standpoint before screening for astigmatism, but after adjustment for lot availability. However, our sales forecast implies unit consumer volume approximating 40% of current hard lens new fits, but through only, on average, approximately 20% of estimated hard lens practices, with constraints on applicability within those practices. Even after adjusting for an anticipated higher average practice size, which we think will continue to characterize Soflens kit placement in 1972, it is clear that demand stimulation will have to be considerable for our forecasts to be met. We continue to be confident that this will develop fairly soon, but note that it requires careful monitoring.

There is a possibility of product improvement in the acuity area although at this time we do not know of any such improvements to be made available over the term and point out that if the modifications made on the product are substantial, they may require FDA approval.

Estimated Fourth Quarter Results

IOL's ophthalmic products sales continue strong, however, we estimate that margins have declined somewhat domestically due to start-up costs and a buildup in overhead related to the company's recently opened Maryland manufacturing facility. The instrument divisions domestically continue

BOL

to show very weak sales with the microscopic products division, in particular, continuing to be sharply lower than 1970. In net, after possible year end adjustments (which on balance may be positive), fourth quarter sales and earnings for the opthalmic and instrument divisions combined, are estimated to be about flat as compared to the prior year at approximately $0.35/share on sales of $31 million. The Bushnell acquisition, which will be accounted for on a pooling-of-interest basis, will add its full year results ended October, 1971 to BOL's fourth quarter, resulting in an increase in sales of approximately $9 million and earnings of $0.13/share. Thus, consolidated fourth quarter sales and earnings, prior to the removal of the first nine months of Bushnell, are estimated at approximately $48 million and $1.20-1.25 per share respectively. Full year earnings are therefore estimated at approximately $2.50-2.55/share. We estimate that Bushnell probably earned approximately $0.13/share for the first nine months and that National Patent royalties of approximately $0.15-0.20/share would have been payable were it not for cumulative historical losses yet unrecovered through the fourth quarter. (In this connection, it is still unclear as to the precise amount that NPD would have been due or when such payments may begin.)

1972 Estimate

We continue to believe that opthalmic sales and earnings will advance by approximately 8-10% in 1972 and that some recovery of domestic instrument earnings may develop later on this year. We anticipate that non-Soflens earnings might approximate $1.75/share in 1972 on sales of $185 million, versus an estimated $1.60/share on sales of $142 million in 1971, including Bushnell. Total corporate earnings for this year are estimated to range from $4.50-6.00/share, with the single best estimate being $5.25/share.

Our estimates imply first quarter earnings of $0.85-0.90/share versus an estimated restated $0.30/share in 1971 (assumes NPD royalties from January 1, 1972). We expect this to build up to a median estimate of $1.60/share by the fourth quarter, or at an annual rate of close to $6.50/share. We continue to believe it possible for earnings to approach $8.00/share in 1973, given no change in competitive conditions as it relates to Soflens.

Recommendation

We therefore continue to recommend purchase of BOL to investors willing to assume the industrial risks connected with Soflens. In terms of timing, we believe that the next two quarters will provide much more meaningful data as it relates to the product's longer term success, as well as the validity of our projections for 1972. Accordingly, a cautious approach towards establishing investment positions at this time may be prudent unless significant price weakness develops. We would take a more aggressive stance in the $140-150 area.

We expect that BOL may do an equity financing, in the amount of approximately $25 to $30 million, sometime during the first quarter.

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Soft Contact Lenses Have Serious Problems, Two Researchers Say

Optometrists Are Told of Various Alleged Shortcomings; Makers Deny Products Are Defective

A WALL STREET JOURNAL *News Roundup*

The view through the much-publicized soft contact lenses has been a gloomy one for manufacturers and optometrists attending a conference on the lenses in New Orleans this week. They heard reports from researchers of lenses falling apart, lenses contaminated with bacteria and of lenses developing mysterious red spots that can't be removed.

"The problems seem to be mounting so fast I wish to hell I had never heard of the lenses," one disgruntled optometrist told a reporter.

The majority of the reports of problems involved lenses made by Bausch & Lomb Inc., the only company allowed by the Food and Drug Administration to sell its soft lenses in the U[illegible] and lenses made by the Griffin Laboratories, a subsidiary of Frigitronics Inc., which has applied to the FDA for marketing clearance.

When asked about the asserted shortcomings and problems of the lenses, Bausch & Lomb vehemently denied that they are anything like what the investigators say.

Soft-contact lenses are made of hydrophilic, or water-attracting, plastic, which enables the lens to conform to the irregular surface of the eye's cornea, making them more comfortable and more difficult to dislodge than rigid-contact lenses.

The conference, held by the American Optometric Association, produced what is thought to be the first report of bacterial contamination of the soft lenses made by Bausch & Lomb. Alpha Charles, a microbiologist at Canada's University of Waterloo in Ontario, said he had found live bacteria on a Bausch & Lomb lens after it had been put through the sterilizing process recommended by the company.

Previous reports of bacterial contamination of soft lenses have involved lenses made by other concerns. Recently, Mr. Charles reported that he had found bacteria on and inside the Griffin lens after it had been sterilized.

He said his latest findings came from a Bausch & Lomb soft lens that was sent to him by an optometrist after it had been worn by a patient. The lens, he said, had been sterilized by the recommended Bausch & Lomb method of boi[illegible]n saline solution inside a special container. He said he took a small section of the lens and magnified it 5,250 times on a scanning electron microscope. The resulting photograph, he told the optometrists shows live "unidentified bacteria" on the surface of the lens.

Mr. Charles said he has "severe misgivings" about the Bausch & Lomb sterilizing

He also took another section of the same lens and magnified it 600 times, producing a photograph showing a crack "running along the edge of the lens." He said he believes it's "fairly obvious that surface cracks and flaws are developing" on soft contacts. These, he said, are capable of trapping nutrients, such as protein from tears, in which bacteria can grow.

Another scientist, who had participated in the clinical study of the new lens for Bausch & Lomb, said it can become coated with a deposit that can make it unusable in a matter of weeks.

The researcher is Neal Bailey, assistant professor of physiological optics at Ohio State University's College of Optometry. He was an investigator for the Bausch & Lomb lens until last year and currently is a clinical investigator for the Griffin lens. He said the coating of the Bausch & Lomb lens is its "most severe problem." The coating appears to consist of protein, accumulated from tears, from the fingers and from the atmosphere, he said.

The coating, he said, isn't soluble in water and so becomes "cooked on" the lens during sterilization. Mr. Bailey said the deposit "makes the lens uncomfortable to wear and obscures vision."

He said he also has seen "brick-red spots" develop on about six Bausch & Lomb lenses, which penetrated the surface and couldn't be removed without destroying the lens. Mr. Bailey said he was unable to explain their nature because the lenses were returned to Bausch & Lomb "but the company hasn't given me a report."

Mr. Bailey also was critical of the Griffin lens because, he said, it isn't durable. Wearers of the lens might have to buy "two, and possibly three pairs of replacement lenses in a year," he said. The life of the Bausch & Lomb lens, he said, "approaches a year."

Mr. Bailey said that since he became a Griffin investigator in November, two of the five patients he has fitted with the lens "have experienced breakages." One lens, he said, broke after about three days of wear. "It just pulled apart while the patient was cleaning it," he said.

Daniel G. Schuman, chairman of Bausch & Lomb, said in Rochester, N.Y., that the report of Mr. Charles of bacterial contamination of the company's soft lens "is simply contrary to the vast amount of accumulated data based on tests conducted both by Bausch & Lomb and by outside independent laboratories."

Mr. Schuman said the tests "had firmly established" that sterilizing the lenses in water heated to boiling, as recommended by the company, "will destroy any growing microorganism, including bacteria."

He said any lens leaving the company's factoyr is sterile and suggested the possibility that the contaminating bacteria found by Mr. Charles could have been introduced while the lens was being prepared for the electron microscope.

As to Mr. Bailey's statement about a coating on the soft lens, Mr. Schuman said "we don't believe that the 'coating' is a problem at all." And "based on experience to date," he said, the life expectancy of a Bausch & Lomb soft lens is "at least comparable" to hard-contact lenses.

Allan Isen, president of Griffin Laboratories, said charges that the Griffin soft lenses aren't durable were made on the basis of "virtually no clinical work."

Mr. Isen said Neal Bailey has been a co-investigator of the Griffin lens since "mid or late December." His charges that the lenses broke frequently were based on "only a few weeks of work", Mr. Isen said. Griffin's own tests show there is "very little" breakage among patients properly trained to handle the lenses, he said. Mr. Isen said that handling and cleaning procedures for the Griffin lenses are quite different from those used with the Bausch & Lomb lenses.

The Griffin executive asserted that Mr. Bailey is serving as a co-investigator for the Griffin lens under the supervision of an opthalmologist at Ohio State who has been studying the lenses for 18 months.

"Mr. Bailey isn't in a position to make the charges he did," Mr. Isen said. "His supervisor's work has shown quite a low rate of destruction for the lenses—a rate less than the rate of lost lenses among hard-contact lens users," he added. He declined to identify Mr. Bailey's supervisor.

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Union Corp. Asks FDA For Clearance to Test Soft Lens on People

Firm Asserts Approval Is Needed To Begin Canadian Marketing, But That's Disputed by Agency

By a WALL STREET JOURNAL Staff Reporter

VERONA, Pa.—Union Corp. said that after several delays it finally has applied to the Food and Drug Administration for permission to test its new soft contact lens on people.

The company said that once it receives FDA approval, it plans to begin "limited Canadian marketing" of the lens. The company said such approval is necessary before the lens material can be exported to Canada.

In fact, Union said, it had planned to market the lens in Canada before Jan. 1, but abandoned these plans because of a delay in filing the testing application with the FDA.

However, the FDA disputed Union's reading of FDA regulations. Union could have been selling the lenses in Canada all along, a spokesman said. The FDA application "hasn't any bearing whatsoever on marketing of the lens in Canada," he said.

Union, after checking with its lawyers, said it was sticking to its interpretation of FDA regulations. "We hate to argue with the FDA," said a company spokesman, "but we believe that this approval is necessary before we can export the lenses."

The lenses are made of a water-absorbing plastic. They follow the eye's curvature and remain soft and supple by absorbing moisture from the eye. The only company thus far to receive FDA approval to market the lenses in the U.S. is Bausch & Lomb Inc. Another company, Griffin Laboratories Inc., a Frigitronics Inc. subsidiary, has asked the FDA for marketing approval.

If granted, Union's application, officially called an investigative new drug application, or IND, will permit patients to wear Union lenses during clinical testing. The company then would use this data in its request to the FDA for marketing approval. By law, the FDA must act on an IND request within 30 days.

Union originally said it planned to submit the IND last summer. But, the company said, it ran into problems with an outside laboratory that was testing the lenses on rabbits.

The FDA is treating the new lenses as drugs. But the Canadian government has allowed them to be sold without similar controls when they are used to replace eyeglasses. The Canadians haven't permitted their sale for the treatment of eye disease. Union said its application to the FDA was only for use of the lenses as eyeglasses. Bausch & Lomb also sells them for this purpose.

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Heard on the Street WSJ 2-23-77

By DAVID BRAND

Du Pont is jumping into one of the hottest fields that Wall Street has seen in years—soft contact lenses.

The giant chemical company has developed a soft lens that is believed to be a significant advance in soft-lens technology. And doctors and optometrists who have seen it say it could make present soft contacts obsolete.

Ironically, the Du Pont development, which may take several years to reach the market, comes at a time when soft-lens companies, bidding for a place in the lucrative market, are coming under increasing pressure from a more vigilant Food and Drug Administration. The agency, observers say, is alarmed at reports of bacterial contamination of the lenses that have been publicized in recent months.

To investors this means that FDA marketing approval of new soft contacts, and the expected big earnings, may be a lot further off than Wall Street imagines—perhaps several years. With Du Pont's lens on the horizon, some analysts say, profits for some lens manufacturers may never materialize.

In recent weeks, FDA observers say, the agency's activity has been particularly intense. Agency inspectors, they say, have been interrogating independent researchers. They have been "putting the heat" on clinical researchers for individual companies and have been inspecting manufacturing facilities. And, in recent weeks, the FDA has discussed with an advisory panel of doctors and optometrists ways to tighten manufacturing controls of soft lenses.

What does this mean to the companies involved?

Bausch & Lomb, the only company to win FDA marketing approval for its soft lenses, soon will begin to feel the pressure from this new FDA zeal, eye-care professionals are confidently predicting. The agency, they speculate, soon will ask Bausch & Lomb to supply new data on the safety of its lenses.

The Bausch & Lomb lens was given marketing approval last year. Since then, the FDA has issued a set of new and tougher guidelines for the testing of the lenses on humans. It's believed the FDA will ask Bausch & Lomb for new testing data that would comply with the new guidelines.

There's even speculation that the FDA will go even further and impose some type of control on the sale of the Bausch & Lomb lens so the agency could exert greater supervision of the product. Such an action could severely limit sales of the lenses.

Both the FDA and Bausch & Lomb, it's known, are coming under increasing pressure from doctors who are dissatisfied with the new lenses. Several have castigated the company for what they call lack of quality control. One is Dr. Perry Rosenthal, a Boston ophthalmologist who is director of the contact-lens clinic at Massachusetts Eye and Ear Infirmary. He says that he's receiving Bausch & Lomb lenses that are improperly shaped, resulting in "comfort and vision problems."

Dr. Rosenthal, who was a clinical investigator for the Bausch & Lomb lens, says the company "had admitted to me that they have a quality control problem." He adds: "I think it will be some time before they resolve it."

Bausch & Lomb may have tacitly conceded the problem in a questionnaire that has been sent to eye doctors around the country in the past few days. The questionnaire asks doctors to report any problems with the lens, including possible contamination.

Griffin Laboratories Inc., a subsidiary of Frigitronics Inc., should get FDA marketing approval for its soft lens before the summer, industry sources close to the FDA believe. But it's expected that this approval will place sharp limits on its sales.

This is because Griffin has applied to sell its lens only as a bandage for diseased eyes. Normally, approval on this basis wouldn't prevent doctors from also prescribing the lens for correction of eyesight, which is the highly lucrative market currently monopolized by Bausch & Lomb.

But, say the sources, the FDA is torn between a desire to approve a lens that is extremely effective in the treatment of certain eye diseases and a concern about reports of bacterial contamination of the lens. The solution, it's believed, will be for the FDA to permit Griffin to market the lens for use as a bandage but not made in optical form, thus eliminating any hope that doctors and optometrists would use it for eyesight correction. One knowledgeable doctor says the number of lenses that could be sold for eye bandages "would be minimal."

Doctors believe it's going to take Griffin a good three years to get its lenses approved by the FDA for correction of eyesight.

It's noted by doctors that the FDA has been putting "a great deal of pressure" on Griffin's clinical investigators. They are questioning data and methods of testing, doctors say.

It's also known that FDA inspectors recently spent several days inspecting Griffin's factory in Buffalo, N.Y. They also have contacted scientists in Canada who have reported finding bacteria on and inside the Griffin lens.

Union Corp., another contender for soft-lens profits, is expected to get FDA approval soon to test its lenses on humans.

But here again, observers believe, there's little cause for optimism. One well-informed source says the FDA's requirements for exhaustive testing and the amount of agency red tape involved could mean that it will take Union about three years to get marketing approval.

Du Pont, meanwhile, is avoiding any possibility of adverse publicity by simply declining to talk about its new lens. "We just don't want to get involved in the type of publicity that has surrounded other lenses," says Paul White of the Massachusetts College of Optometry, who is helping Du Pont with the lens testing.

Mr. White stresses that it could be several years before the Du Pont lens gets onto the market. He won't comment on reports that the lens is made of Teflon.

Nor will he discuss reports that the lens can be permeated by oxygen. Like all living tissue, eye tissue needs oxygen. Researchers have been critical of many of the soft lenses that are being developed because, it's thought, oxygen can't pass through them.

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Du Pont Gives Data On Soft Contact Lens Developed in Secret

Company Says It Might Have Product, Differing From Others, On the Market in 1 to 3 Years

By a WALL STREET JOURNAL *Staff Reporter*

WILMINGTON, Del.—Du Pont Co. disclosed the first details of a soft contact lens it has been developing secretly. The company said it might have the new lens on the market within one to three years.

This would indicate the company might be learning soon to ask the Food and Drug Administration for permission to test the lens on humans. Sources close to the FDA say it takes up to three years from the granting of such approval to final FDA approval to market a soft lens.

A Du Pont scientist stressed in an interview that the lens is unlike most other soft lenses in that it doesn't absorb moisture. One soft lens, manufactured by Bausch & Lomb Inc., and the only soft lens to date to win FDA marketing approval, is made of a hydrophilic polymer, a type of plastic that stays soft and supple in the eye by absorbing moisture from the surface of the eye.

The Du Pont scientist said the company's new lens is inherently supple and doesn't require moisture to remain soft. He said the lens isn't made of Teflon, as had been suspected by industry observers. He also said, "Teflon has a specific chemical makeup. Change one molecule and you can no longer can it Teflon."

The scientist said the new lens is made of a very complex polymer and is an outgrowth of one of the company's research programs. He said the material bears no relation to that used in the Bausch & Lomb lens.

The scientist also said Du Pont probably wouldn't make the lens itself, but would supply the material to an outside manufacturer. It's thought, however, that the company has produced lenses made of the new material. Paul White of the Massachusetts College of Optometry recently told a reporter that he has aided the company in testing its lens.

Doctors and industry sources who are familiar with the Du Pont lens have described it as being of an unusual character that could make current soft contact lenses obsolete. They say that because the Du Pont lens doesn't absorb moisture, it should be simple to sterilize and shouldn't run into problems of bacterial contamination that have been reported in connection with some other soft lenses.

The Du Pont scientists also confirmed reports that the Du Pont lens allows oxygen to flow through the material. It has been noted by some researchers than when other soft lenses are worn, oxygen can only reach the eye with the tear flow underneath the lens. Industry sources say a lens that enables the free flow of oxygen through the material would be a significant technological advance.

Du Pont has been keeping its new lens a top-secret project. As recently as only a few days ago, the company denied that it was even working on such a lens.

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THE NEW YORK TIMES, THURSDAY, FEBRUARY 26, 1970

Market Place: Du Pont's Lens Affects Others

By JOHN J. ABELE

Yes, du Pont, the giant of the chemicals and plastics business, is working on a contact lens. No, it is not a "soft" lens like the kind being marketed by Bausch & Lomb and other companies. Yes, it does have some properties similar to those of the soft lenses, but there also are differences. No, it will not be on the market in a hurry.

That was the upshot of queries yesterday following the publication of a report that du Pont had scored "a significant advance in soft-lens technology," one that some doctors believe could make present types "obsolete."

The news set off a rash of selling in the small and highly volatile group of stocks that have a stake in the soft-lens business.

Bausch & Lomb, the leader in the field, tumbled 14¾ to 171 on a delayed opening of 20,000 shares. The first price marked the low of the day. From there it straggled on to close at 176½, down 11¾ for the day, on total trades of 85,900 shares. The development of the soft lens was a key factor in Bausch & Lomb's rise from a low of 46¾ in 1971 to a recent high of 194¾.

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In over-the-counter trading, National Patent Development, which licenses Bausch & Lomb's product, dropped 11 points to 157. At one point, the bid price was quoted as low as 139.

Elsewhere in the group, Union Corporation fell 1⅜ to 14⅝ on turnover of 113,600 shares on the Big Board. Frigitronics, which has a limited version of a soft lens up for approval by the Food and Drug Administration, dropped 3 points to 35 in over-the-counter trading.

Du Pont, meanwhile, moseyed up to a high of 161¼ and closed at 159¾, up ⅝, on a modest turnover of 18,000 shares. The smallness of the move apparently reflected investor sentiments that, even if the du Pont product works out (remember Corfam?), it would have to go a long way before making a significant impression on du Pont's earnings. In 1971, the Wilmington, Del., giant reported net income of $357-million on sales of $3.5-billion.

The entry of du Pont into the contact lens field could, of course, have a definite impact on the hopes of relatively smaller companies, such as Bausch & Lomb, as well as hot-shot market traders for whom the soft lens race has been one of the better games in town.

Du Pont, which previously had not said anything about its project, was not inclined to add many details. One reason, a spokesman said, was that "there's still a heck of a lot of work to be done."

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The spokesman also disagreed with the description of du Pont's product as a "soft" lens. "It's a hard, oxygen-permeable lens and it absorbs very little water," he said. Reports from other company sources described the lens material as a "complex polymer" that is pliable. They also indicated that commercial introduction of the lens might be three years off.

The "softness" of a lens is one of the factors that is supposed to make it more comfortable to a wearer. But it also can involve the absorption of eye fluids, which can raise the problem of contamination. That problem is one reason for a division of opinion among eye specialists about the efficacy of the new type of lens. It also has led to difficulties in getting F.D.A. approval for the new lenses.

One Wall Street source commented yesterday: "Four out of five professionals I have talked to about the soft lens say it's very questionable and they wouldn't want to work with it. A hard lens that is not as porous and less prone to contamination might be more acceptable."

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ROCHESTER, N. Y.
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Hard Questions Raised By Soft Lens Squabble

Sorry, but it's not clear whether DuPont may have the makings of a soft plastic contact lens or a hard plastic lens.

However, these things are clear:

People don't agree on what "hard" and "soft" mean; the Bausch & Lomb shares that soared over 180 on the basis of the soft lens are not on firm footing; the Wall Street Journal and the Dow-Jones News Service don't like to admit a mistake.

Yesterday the Dow-Jones wire and newspaper reported flatly that DuPont was "jumping into" the soft lens field with a product that "could make present soft contacts obsolete."

B&L shares couldn't be opened for trading on the New York Stock Exchange until around noon—and then moved at 171, down 14⅞ from Tuesday's close.

By this time DuPont spokesmen were giving out a statement that DuPont was not "jumping into" the field but was "evaluating a class of plastics for possible use in the manufacture of hard, oxygen-permeable contact lenses. However, further testing will be required before any decision is made about supplying these materials for contact lens manufacture."

The Dow wire waited until the end of the NYSE trading session, with B&L at 174½, then said DuPont "confirmed it is developing a new type of soft contact lens."

"It's hard!" retorted a DuPont spokesman. "It is our belief by all the criteria we know about that this is a material that would make a hard lens . . . The material we are working on can be char-

Apparently Dow Jones has chosen to regard any lens that has any pliability as "soft." However, soft lenses introduced so far are water-absorbing and as supple as a flower petal when wet. The DuPont material is not water-absorbing and not supple.

Soft lenses can be worn by persons who find conventional hard contact lenses too uncomfortable.

The reason for concern about oxygen-permeability is that some researchers doubt that the B&L Soflens allows the eye to receive the necssary oxygen. B&L says the eye receives oxygen through the water.

The B&L Soflens went on the market last year. A DuPont scientist said yesterday the DuPont lens might be fully commercial within three years, but he apparently was thinking in terms of DuPont's own testing procedures rather than the time required for Food and Drug Administration clearance.

DuPont has not asked the FDA for premission to test the lens on humans.

Not only B&L but other stocks in the soft lens field were jolted by the Dow Jones story. National Patent Development, which licenses B&L's lens, dropped 11 points to 157 in the over-the-counter market; Union Corp. fell 1⅜ to 14⅝ and Frigitronics dropped 3 to 36. DuPont was up slightly.

Another part of the Dow Jones story — that B&L was having quality control problems — also was denied by a B&L official. He said questionnaires sent recently to doctors were "routine."—JOHN RUMSEY

LEAD [illegible] FIRM WITHDRAWS BUY RECOMMENDATION ON BAUSCH & LOMB

BY DAN DORFMAN
DOW JONES STAFF REPORTER

NEW YORK--WALL STREET'S LEADING BULLS ON BAUSCH & LOMB SMITH BARNEY & CO HAS PULLED ITS BUY RECOMMENDATION ON THE VOLATILE ISSUE DOW JONES LEARNED.

IN AN INTERNAL WIRE TO ITS OFFICES WHICH DOW JONES OBTAINED SMITH BARNEY A LEADING RESEARCH-ORIENTED BROKERAGE CONCERN CITES THREE MAJOR REASONS WHICH HAVE LED TO THIS DECISION.

- -RECURRENT NEGATIVE PUBLICITY WHICH QUESTIONS BOTH THE SAFETY AND EFFICACY OF SOFT CONTACT LENSES.

- -PERIODIC CONCERN THAT THE FOOD & DRUG ADMINISTRATION MAY IMPOSE RESTRICTIVE REGULATORY CONTROLS.

- -THE POSSIBILITY OF COMPETITION.

ALTHOUGH SMITH BARNEY ISN'T RECOMMENDING SALE OF THE STOCK OF THE ONLY COMPANY GIVEN FDA APPROVAL TO MARKET A SOFT LENS THE ELIMINATION OF THE BUY RECOMMENDATION HAS HAD AN IMMEDIATE NEGATIVE IMPACT ON THE MARKET.

THE SMITH BARNEY WIRE WENT OUT LATE YESTERDAY AFTERNOON AFTER THE MARKET CLOSE IN NEW YORK BUT BEFORE THE CLOSE OF THE PACIFIC COAST EXCHANGE. IT IS UNDERSTOOD SMITH BARNEY DID SOME OF THE SELLING ON THE PACIFIC EXCHANGE.

THE ISSUE WHICH CLOSED AT 168 1-2 YESTERDAY AND HASN'T OPENED AS YET TODAY IS CURRENTLY BEING QUOTED BY SOURCES ON THE FLOOR OF THE NEW YORK STOCK EXCHANGE AT 155 TO 162. EARLIER IN THE DAY IT HAD BEEN QUOTED AT 148 TO 153. THE STOCK CLOSED LAST NIGHT ON THE PACIFIC COAST EXCHANGE AT 158 OFF 10 1-2.

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IN ITS WIRE TO ITS BRANCH OFFICES WHICH WAS FOLLOWED BY A CONFERENCE CALL THIS MORNING TO ITS CLIENTS SMITH BARNEY SAYS 'THE CURRENT PRICE PROBABLY ADEQUATELY DISCOUNTS 1972 EARNINGS AT ABOUT 28 TIMES THE MIDPOINT OF OUR $5 TO $7 PER-SHARE ESTIMATE RANGE FOR THIS YEAR. THEREFORE SAYS THE BROKERAGE CONCERN ANY SUSTAINED MOVEMENT IN THE STOCK PRICE MUST DEPEND ON EXPECTATIONS FOR 1973 AND BEYOND.

HENCE IT ADDS 'WE THINK IT IS TOO EARLY AT PRESENT TO DEVELOP ANY CONVICTION ON THE OUTLOOK THAT FAR OUT PARTICULARLY IN VIEW OF THE CROSSCURRENTS WHICH SEEM TO BE AFFECTING THE CONTRIBUTION OF THE SOFT LENS OVER THE SHORT TERM.

BAUSCH & LOMB OPENED AT 158 OFF 10 1-2 ON 60 000 SHARES.
-- 1 29 PM EST

LEWIS BUSINESS FOR 3 -- 1ST QTR JAN 31

N Y -DJ- IN ITS ASSESSMENT OF THE SHORT TERM OUTLOOK FOR BAUSCH & LOMB SMITH BARNEY OBSERVES THAT THERE ARE SOME INDICATIONS WHICH MAY NOT BE FAVORABLE. IT NOTES FOR EXAMPLE THAT SOFT LENS SALES IN THE U.S. APPEAR TO HAVE SLOWED IN RECENT WEEKS. SMITH BARNEY POINTS OUT THAT THE REASONS FOR THIS ARE DIFFICULT TO JUDGE BECAUSE FEBRUARY IS THE SEASONAL LOW POINT FOR THE CONTACT LENS BUSINESS.

ON THE OTHER HAND THE BROKERAGE CONCERN SAYS THERE IS SOME EVIDENCE THAT SUGGESTS THAT THE NEGATIVE PUBLICITY ABOUT SOFT CONTACT LENSES MAY HAVE HURT SALES TO BOTH CONSUMERS AND PRACTITIONERS. TO THE EXTENT THIS HAS BEEN A DETERRENT TO SALES IT MAY INDICATE A SLOWER RATE OF ACCEPTANCE THAN IMPLIED IN OUR PREVIOUS FORECASTS SMITH BARNEY ADDS.

SMITH BARNEY IN ITS WIRE ALSO POINTS OUT THERE ARE SOME DEVELOPMENTS WHICH IT VIEWS AS ENCOURAGING OVER THE NEAR TERM.

CHIEF AMONG THEM-

- - THE COMPANY IS PLANNING TO INTRODUCE IN MARCH APHAKIC LENSES FOR THOSE WHO HAVE CATARACT OPERATIONS.

- - THE COMPANY IS PREPARING TO INTRODUCE A SMALLER FITTING KIT FOR PRACTITIONERS WHO HAVE RELATIVELY SMALL CONTACT LENS PRACTICES.

- - THE COMPANY HAS ENTERED OR WILL ENTER IN THE NEAR FUTURE SEVERAL IMPORTANT FOREIGN MARKETS INCLUDING JAPAN CANADA LATIN AMERICA AND EUROPE.

— 1 58 PM EST

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By B

-0- 2 06 PM EST

SMITH BARNEY - BAUSCH & LOMB -3-

N Y -DJ- IN TERMS OF EARNINGS SMITH BARNEY THINKS THERE IS A GOOD CHANCE BAUSCH & LOMB'S FIRST PERIOD NET WILL MATCH THE $1.02 A SHARE EARNED IN THE FOURTH QUARTER OF 1971 PROVIDED THE APHAKIC LENSES ARE INTRODUCED EARLY ENOUGH IN MARCH. OTHERWISE THE BROKERAGE CONCERN THINKS PROFIT FOR THE PERIOD COULD BE CLOSER TO 80 TO 85 CENTS A SHARE. EARNINGS IN THE FIRST QUARTER OF LAST YEAR WERE 27 CENTS A SHARE BEFORE RESTATEMENT TO REFLECT AN ACQUISITION.

AS SMITH BARNEY SEES IT IT MAY TAKE ANOTHER THREE OR FOUR MONTHS AND POSSIBLY EVEN A LITTLE LONGER TO DETERMINE WHICH OF THE CROSSCURRENTS IS THE MORE RELIABLE INDICATOR OF THE OUTLOOK FOR 1973 AND POSSIBLY BEYOND.

'DURING THIS PERIOD WE THINK THAT PRICE PERFORMANCE IN BAUSCH & LOMB SHARES COULD BE LIMITED' SMITH BARNEY DECLARES. NONETHELESS THE BROKERAGE FIRM SAYS 'WE STILL THINK THE STOCK HAS GOOD LONG TERM POTENTIAL.'
-0- 2 08 PM EST

BAUSCH & LOMB - STOCK MARKET

N Y -DJ- BAUSCH & LOMB IS TRADING ON THE NYSE AT 158 OFF 10 1-2 WHERE IT OPENED THIS AFTERNOON AFTER A DELAY IN TRADING DUE TO AN INFLUX OF ORDERS.

THE DOW JONES NEWS SERVICE REPORTED THAT SMITH BARNEY & CO -FORMERLY A LEADING BULL ON BAUSCH & LOMB- REMOVED ITS BUY RECOMMENDATION ON THE VOLATILE ISSUE.

IN OTHER COMPANIES WITH INTERESTS IN SOFT OR SEMI-SOFT CONTACT LENSES DU PONT IS UP 1-2 TO 162 1-2 UNION CORP 14 1-4 OFF 1-2 AND OVER-THE-COUNTER FRIGITRONICS IS QUOTED AT 30 1-2 BID DOWN 3 1-4.

NATIONAL PATENT IS QUOTED AT 138 BID DOWN 7. NATIONAL PATENT LICENSED BAUSCH & LOMB FOR U S DISTRIBUTION OF THE SOFT LENS.
-0- 2 09 PM EST

VENDO -2-

[redacted] COMPANY SAID MANY OF THE [redacted] RESULTS FOR 1971

3/11/22

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-LOCKHEED 4TH QTR PROFIT $1.9 MILLION VS YEAR-EARLIER LOSS OF $98.5 MILLION

4TH QTR 1971 NET WAS EQUAL TO 17C A SHR.

YEAR PROFIT $15.4 MILLION OR $1.36 A SHR VS LOSS OF $68.3 MILLION.

THE 1971 PROFITS INCLUDE A SPECIAL CREDIT OF $3.8 MILLION OR 34C A SHR FROM THE SALE OF UNUSED LAND.

LOCKHEED SAID FOURTH QUARTER AND 1971 YEAR RESULTS WERE GENERALLY IN LINE WITH COMPANY PROJECTIONS AND ANALYSTS EXPECTATIONS.

4TH QTR SALES $506 MILLION VS $791 MILLION.

YEAR SALES $2.85 BILLION VS $2.54 BILLION.

DANIEL HAUGHTON LOCKHEED CHAIRMAN SAID YEAR-END CASH AND SECURITIES OF $102 MILLION WERE IN EXCESS OF FORECASTS MADE LAST SUMMER AND OUTSTANDING BANK BORROWINGS OF $475 MILLION AT YEAR-END WERE LESS THAN FORECAST.
— 2 02 PM EST

-VENDO CO 1971 NET 3C A SHR VS 79C

NET INCOME $91 717 VS $2 110 471.
SALES $91 868 186 VS $90 747 844.
— 2 03 PM EST

DOW JONES 2 00 P M STOCK AVERAGES

30 INDUS	935.51	UP	7.38 OR	0.79 PC
20 TRANSP	256.90	UP	1.28 OR	0.50 PC
15 UTILS	113.46	UP	0.12 OR	0.10 PC
65 STOCKS	321.77	UP	1.91 OR	0.59 PC

-0- 2 03 PM EST

LOCKHEED -2-

HAUGHTON SAID LOCKHEED MUST MOVE TOWARD AN EARLY DECISION TO PROCEED WITH FULL DEVELOPMENT OF A LONGER-RANGE LONDON TO CHICAGO L-1011 TRISTAR WITH INCREASED GROSS WEIGHT AND USING A MORE POWERFUL 45 000 POUND THRUST ROLLS-ROYCE ENGINE.

THE ROLLS-ROYCE ENGINES GOING INTO THE TRISTARS PRESENTLY BEING BUILT HAVE 42 000 POUNDS OF THRUST.

HAUGHTON SAID THE DECISION TO DEVELOP A LONGER- ANGE TRISTAR WOULD REQUIRE APPROVAL OF THE EMERGENCY LOAN GUARANTEE BOARD AND OF THE COMPANY'S LENDING BANKS.

SOFLENS SALES POLICY
AND PRICE LIST

MARCH 1, 1972

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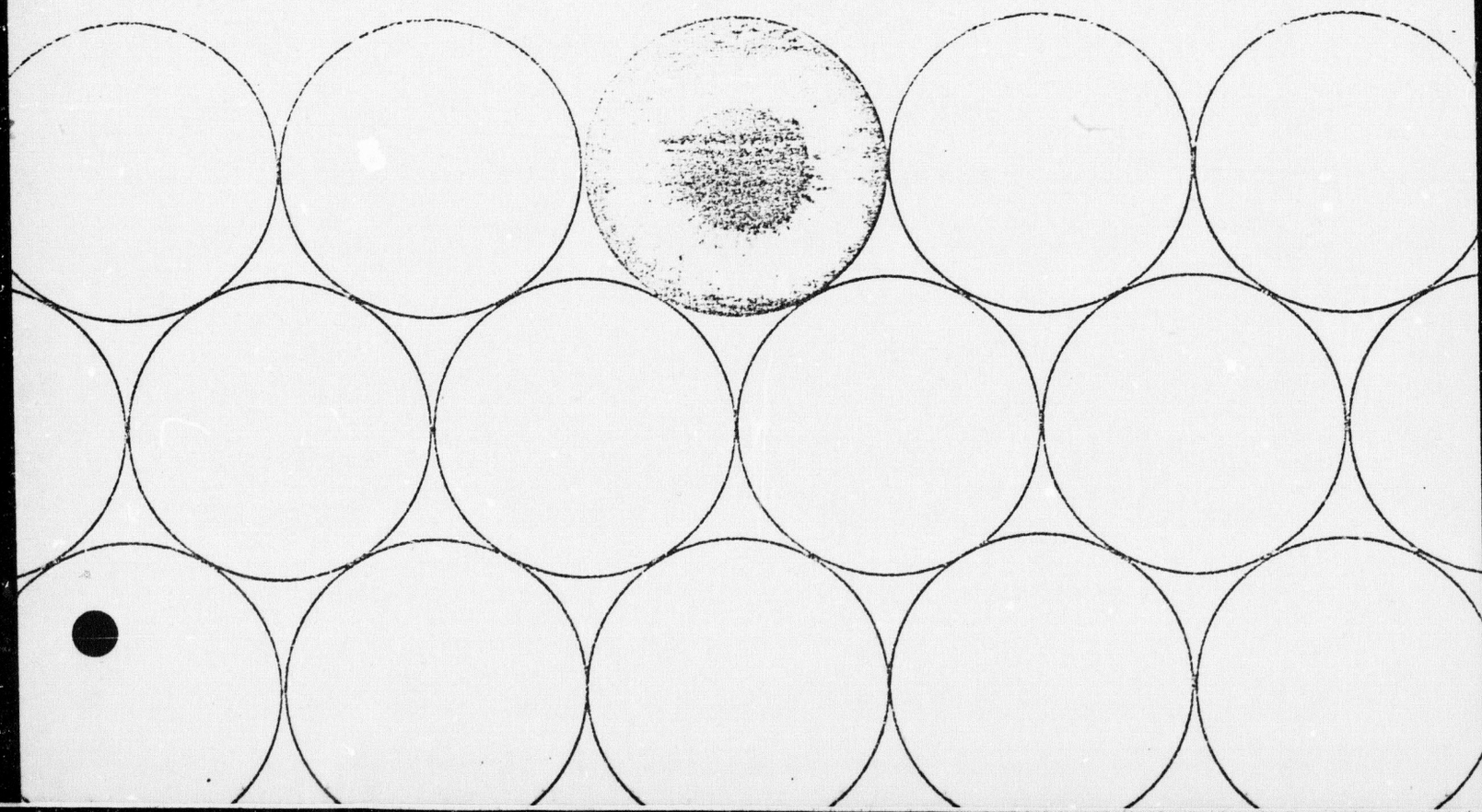
BAUSCH & LOMB
SOFLENS DIVISION



SOFLENS™

SALES POLICY

LENS EXCHANGE & RETURN POLICY

Unopened lenses only may be exchanged at any time, for any SOFLENS Contact Lens of similar price. There will be no charge for this service. If exchange is made within two years from date of purchase.

Unopened lens vials may be returned for full credit if the return is made after four months but not later than two years from date of purchase.

PAYMENT PLANS

The Bausch & Lomb installment plan for the SOFLENS Practitioner's Packages provides a means whereby payment on the entire package and a stock of lenses can be extended over a period of time. All orders are subject to credit department approval.

Practitioner's Package A - The minimum down payment is $500.00 or 10% of the total purchase price, whichever is more (when larger quantities of lenses are ordered). (1) The balance may be paid in 5 equal monthly installments, or (2) the payments may be extended over a 12 month period, in equal monthly installments, with a finance charge of $144.00.

Practitioner's Package B - $200 down payment (no down payment if practitioner already owns Package A or C). Balance to be paid in equal payments at 30, 60, and 90 days with no finance charge.

Practitioner's Package C - $350 down payment (1) Balance to be paid in equal payments at 30, 60, and 90 days with no finance charge, or (2) the payments may be extended over a six month period, in equal monthly installments, with a finance charge of $40.00.

Practitioner's Package D - $350 down payment (1) Balance to be paid in equal payments at 30, 60, and 90 days with no finance charge, or (2) the payments may be extended over a nine month period, in equal monthly installments, with a finance charge of $90.00.

Practitioner's Package E - $200 down payment with the balance to be paid in equal payments at 30, 60, and 90 days. (Available after June 1, 1972).

ALL INITIAL ORDERS ARE SUBJECT TO APPROVAL IN ROCHESTER.

PACKAGE RETURN POLICY

Practitioner's Package A - If for any reason a practitioner wishes to return his SOFLENS Practitioner's Package, he may do so at any time during the first 180 days following delivery by contacting the Bausch & Lomb SOFLENS District Manager. He will then be issued full credit for all unopened materials and a 50% credit on all opened or used materials.

Practitioner's Package B, C, D, - Full credit on all unopened materials and a 50% credit on all opened or used materials returned within 120 days of installation.

Practitioner's Package E - Full credit on all unopened materials and a 50% credit on all opened or used materials returned within 120 days of installation. A minimum service charge of $200.00 will apply.

SHIPMENT OF ORDERS

All contact lenses and accessory items will be shipped prepaid. Lenses will be shipped by first class mail.

PRICE SCHEDULE

SOFLENS Contact Lenses (polymacon) and general SOFLENS supplies can only be purchased by an account who has previously purchased a complete SOFLENS Practitioner's Package. This requirement assures that lenses will always be placed only where proper ascepticizing equipment is available.

MARCH 1, 1972

SOFLENS™ PRICE INFORMATION

PRACTITIONER'S PACKAGE	PRICE	DOWN PAYMENT	RETURN PRIVILEGES	PAYMENT PLAN
A. 72 lens Fitting Set (minus lenses from 0.50 to -9.00 D)	$2558.85	$500 or 10% whichever is more. (When larger quantities of lenses are ordered)	Full credit on all unopened materials and half credit on all opened or used materials returned within 180 days of installation.	1. 6 months at no charge. 2. 12 months with $144 finance charge.*
B. 17 lens Fitting Set (plus lenticular lenses from -9.00 to -17.00 D)	$ 773.85	$200 (no down payment if you already own a Practitioner's Package A or C)	Full credit on all unopened materials and half credit on all opened or used materials returned within 120 days of installation.	Balance in equal payments at 30, 60, and 90 days, with no finance charge.
C. 38 lens Fitting Set (minus lenses from -1.00 to -6.00 D)	$1387.85	$350	Full credit on all unopened materials and half credit on all opened or used materials returned within 120 days of installation.	1. Balance in equal payments at 30, 60, and 90 days, with no finance charge. 2. 6 months with $40 finance charge.*
D. 55 lens fitting Set (minus lenses from -1.00 to -6.00 D; plus lenticular lenses from -9.00 to -17.00 D)	$2080.85	$350	Full credit on all unopened materials and half credit on all opened or used materials returned within 120 days of installation.	1. Balance in equal payments at 30, 60, and 90 days with no finance charge. 2. 9 months with $90 finance charge.*
E. 16 lens Trial Set (minus lenses from -0.50 to -6.50 D)	$ 586.75	$200	Full credit on all unopened materials and half credit on all opened or used materials returned within 120 days of installation. A minimum service charge of $200.	Balance in equal payments at 30, 60, and 90 days, with no finance charge.

* Annual charge of 6.0% per year per $100.00 will be levied for all packages which exceed the basic price by [illegible]

PRINTED [illegible]

PRICE LIST
MARCH 1, 1972

0387

SOFLENS™ PRICE LIST

CATALOG NO.	ITEM	PRICE EACH	PRACTITIONER PACKAGES A	B	C	D	E
	LENSES						
	Minus Lens	$ 32.50	72		38	38	16
	Plus Lenticular Lens	36.00		17		17	
	TOTAL PRICE – LENSES		2,340.00	612.00	1,235.00	1,847.00	520.00
	ACCESSORIES – PRACTITIONER						
140311	Aseptor Professional Unit	145.00	1***	*	1***	1***	*
140312	Projector	135.00	1**	1**	1**	1**	1**
140313	Training Film – Series A	9.00	1	*	1	1	1
140314	Series B1	9.00	*	1	*	1	*
140315	Series B2	9.00	*	1	*	1	*
140316	Vial Rack (capacity 72 lenses)	12.00	1***	*	1***	1***	*
140317	Dispensing Cabinet (capacity 42 lenses)	19.50	*	*	*	*	*
140318	20-Lens Rack	9.75	*	*	*	*	*
140319	Mini-Rack	2.75	1	1	1	1	1
140320	Saline Bottle (4 oz.)	1.50	2	1	1	1	1
	Tweezers		2	1	1	1	1
140322	Crimper	20.00	1	1	1	1	1
	Vial		1	1	1	1	1
	Tray		1	1	1	1	1
	Base Curve Comparator	N/C	1	N/A	1	1	1
	Razor Blades	22.00	*	*	*	*	*
	Penlights - White (6 pk)	5.00					
140323	Penlights - Blue (6 pk)	5.00					
	TOTAL PRICE – PRAC. ACCESS.		44.75	50.75	41.75	59.75	41.75
	ACCESSORIES – PATIENT						
140300	Care Kit	21.00	6	3	3	6	1
140302	Aseptor - Patient Unit	16.00					
140329	Holder - Aseptor Top	1.80					
140301	Carrying Case (6/pk)	16.50	1	1	1	1	*
140332	Patient Instruction Booklet (20/pk)	4.00	1	1	1	1	1
140305	Salt Tablets (12/pk)	22.80	1	1	1	1	*
140314	Squeeze Bottles (12/pk)	4.80	1	1	1	1	*
	TOTAL PRICE – PATIENT ACCESS.		174.10	111.10	111.10	174.10	25.00
	TOTAL MANDATORY ITEMS (Excluding options)		2,558.85	773.85	1,387.85	2,080.85	586.75

*Optional
**Optional if practitioner has suitable 8mm projector
***Optional if practitioner has suitable means of asepticizing

Package E will not be available for shipment until after June 1, 1972.

12-65 WALL STREET JOURNAL
(EASTERN EDITION)
DAILY 455,000

MAR 2 1972 CLIPPED BY BACON'S

JOURNAL
(MIDWEST EDITION)
DLY. 362,400

CLIPPED BY
12-67 WALL STREET
JOURNAL
(PACIFIC COAST EDITION)
DLY. 202,500

MAR 2 1972 CLIPPED BY
12-68 WALL STREET
JOURNAL
(SOUTHWEST EDITION)
DLY. 121,000

MAR 2 1972 CLIPPED BY BACON'S

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Bausch & Lomb Letter To Doctors Concedes Problems on Soft Lens

Buy Recommendation Is Removed By Broker Firm, Smith Barney; Stock Falls $17.50 on Big Board

By a WALL STREET JOURNAL *Staff Reporter*

NEW YORK—Bausch & Lomb Inc. has sent a letter to doctors and optometrists throughout the U.S. indicating that it has had problems in maintaining the sterility of its soft contact lenses.

It was also learned that one of Wall Street's leading research-oriented brokerage concerns, Smith, Barney & Co., removed its buy recommendation on the volatile issue. Smith Barney removed the recommendation in an internal wire to its offices late Tuesday afternoon after the market close in New York but before the close of the Pacific Coast Exchange. It is understood Smith Barney did some selling on the Pacific exchange. The stock closed there Tuesday night at $158, off $10.50 on the day.

The impact of the wire on the New York market yesterday was immediate. Bausch & Lomb didn't open on the Big Board until early afternoon, when it began trading at $158, also off $10.50 from Tuesday's closing. The stock closed yesterday at $151, off $17.50, on volume of 120,300 shares.

Smith Barney's wire was the first major sign of Wall Street disenchantment with one of the most glamorous issues of recent years. The main reason for the fervor with which Wall Street has embraced Bausch & Lomb is its soft contact lenses, which are made of a plastic that stays soft and supple on the eye by absorbing moisture. The company is the only concern so far to receive Food and Drug Administration approval to market the lenses in the U.S.

Smith Barney, which has been recommending the stock for some time, cited as one of its reasons for withdrawing its recommendation "recurrent negative publicity which questions the safety and efficacy of soft contact lenses." In recent months there have been reports from researchers of soft contacts, made by Bausch & Lomb and by other companies, being contaminated by bacteria.

The Bausch & Lomb letter to practitioners was believed to be the first indication by the company itself that it was having problems in keeping the lens free of contamination.

Leaky Vials Disclosed

The letter says that in a "routine examination" of the glass vials in which the lenses are shipped from the factory it was found that "leakage has occurred in some." The company says that these faulty vials had allowed the entry of air "possibly compromising the sterility of the contents."

As a result, the company disclosed yesterday, it held up shipments while its entire inventory was resterilized. The company said production wasn't affected and that shipments will

In its letter, the company also asks doctors and optometrists to resterilize their lens stocks after checking for faulty vials. And the company offers to send them a free pair of lenses for their trouble.

"This offer was made because we wanted to maintain the practitioners' goodwill," Don Allen, a Bausch & Lomb vice president, said. "We are just trying to be friendly while putting them to a lot of trouble."

The Bausch & Lomb lenses are sent from the factory in a sterile saline solution inside a glass vial sealed with a rubber stopper. To prevent the rubber from sticking to the glass the company had inserted a Teflon washer. The company said it had found the washer "occasionally prevented a good seal of the vial."

Mr. Allen said the company had to go through its lens inventory removing the washers. Practitioners were asked to do the same. The company said this was done "with FDA approval."

Stresses Factory Role

Mr. Allen stressed that the "potential for contamination" was discovered at the Bausch & Lomb factory. He said there weren't any reports of contamination from practitioners.

Smith Barney, in its internal wire on sales to both consumers and practioners." It Bausch & Lomb, also cited "uncertainties" over the "periodic concern that the FDA may impose restrictive regulatory controls" and "the possibility of competition."

The wire also said that "there is some evidence which suggests that the negative publicity about soft contact lenses may have hurt sales to boh consumers and practitioners." It said that to the extent that this has been "a deterrent to sales," it may indicate a slowed rate of acceptance "than implied in our forecasts."

The wire was followed by a conference call yesterday morning to Smith Barney clients.

In a related development, it was learned that Cooper Laboratories Inc. is acquiring a one-third interest in a new concern that has world-wide rights to a soft lens material developed by a London optometrist, John DeCarl. Cooper makes prescription pharmaceuticals and other health and dental products.

The interest is in Global Vision Inc., a concern that has been testing the new lens on about 100 people in England for the past year. George L. Lindemann, Global's president, asserted in an interview that the new lens doesn't have to be removed from the eye, unlike the Bausch & Lomb lens, which has to be taken out and sterilized daily.

He said the company plans to apply within two months to the FDA for approval to test the lens on humans in the U.S. But, he said, "there's an awful lot of work on the lens still to

NEW YORK, N. Y.
(m) 883,200 (S) 1,514,000

MAR 2 1972

CLIPPED BY BACON'S

0389

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Market Place: Lehman [illegible] Annual Me[illegible]

By JOHN J. ABELE

Bausch & Lomb Again

Up again, down again, Bausch & Lomb again.

The optical company's stock, which has been riding high on prospects for its soft contact lens, took another one of its periodic dives yesterday, tumbling 17½ to 151 on 120,300 shares. Earlier this year, the stock sold as high as 194¾; its low last year was 46⅜.

The stock's plunge yesterday apparently was precipitated by a report that Smith, Barney & Co., a long-time bull on Bausch & Lomb, had withdrawn its buy recommendation on the stock.

In a wire to its offices, Smith, Barney attributed its action to recurring negative publicity about the lens, concern that the Food and Drug Administration (which has approved the Bausch & Lomb lens) might impose additional controls, and the possibility of competition in the lens field (duPont disclosed last week that it is working on a version of the new type of lens).

The wire added that the recent price of Bausch & Lomb stock "probably adequately discounts 1972 earnings at about 28 times the midpoint of our $5 to $7 per-share estimate range for this year" and that further gains would depend on results in 1973.

For 1971, Bausch & Lomb reported earnings of $2.53 a share, before a nonrecurring gain of 17 cents, compared with $1.71 a year earlier.

Despite the furor in the market yesterday, Faulkner, Dawkins & Sullivan, another leading institutional house, is still optimistic about prospects for Bausch & Lomb.

"We remain positive on the stock," Robert P. Colin, a partner of the firm, said yesterday, "although we are certainly aware of the clouds that surround it."

Mr. Colin said Faulkner, Dawkins was maintaining its estimate that Bausch & Lomb will earn $6 a share this year. The big question, he added, seems to be what kind of price-earnings multiple should be placed on the stock.

"There aren't any new problems that have come up in terms of acceptability, size of the market or F.D.A. approval," he declared. "Acceptance of the product is good and momentum is building, not declining. From the work we have done, the questions and criticisms of the lens don't seem to have much basis in fact."

Mr. Colin conceded that there is "a great deal of risk" in the stock because of the controversy about the lens. "Wall Street investors in high-multiple stocks don't like clouds around them," he said.

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March 2, 1972

MEMORANDUM

TO: R. G. Ellis
S. I. Greenberg
J. R. Jundt
E. C. Sit

FROM: W. W. Wadman

RE: BAUSCH & LOMB, INC.

Alan Woods reported this morning that he has learned that Senator McIntyre of the Senate Monopoly Subcommittee of the Select Committee on Small Businesses has asked the staff to study the question whether or not the subcommittee should hold hearings on the FDA's granting a clearance to Bausch & Lomb on the soft lens, thereby giving Bausch & Lomb a monopoly position and (possibly) hurting a number of small businesses in the process. It should be emphasized that no decision has been made at this point in time, and it's entirely possible that we will hear nothing further on this matter. The purpose of this memo is solely to alert you to the possibility.

Alan also mentioned that a "national" magazine--otherwise unidentified--has just completed an extensive interview with the Counsel of the subcommittee. Alan mentioned this as a possible way of this matter coming to the public's attention.

WWW:mf

INTER-OFFICE CORRESPONDENCE

0391

DATE: March 3, 1972

TO: Institutional Sales

FROM: Leonard M. Wilson

SUBJECT: Bausch & Lomb

It is rumored that Senator McIntyre of New Hampshire has under consideration an investigation of the soft contact lens. The thrust of the investigation might be on the subject of the soft contact lens' safety. We believe that the Bausch & Lomb soft contact lens can stand the scrutiny of such an investigation with flying colors.

It should be stressed that this is only a rumor, and it remains to be seen whether anything will appear in actuality.

cc: Robert Wade, Jr.

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Edwards & Hanly

Washington Institutional Service

March 13, 1972

Published by Edwards & Hanly regularly when the Congress is in session.
Washington: Dorothy K. Gordon New York: Winifred J. Solleveld
Director: M. Daniel Tatkon

* * * * *

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SOFT LENSES MAY GET A HARD LOOK

MORE ON O. T. C. DRUGS

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Balance-of-Payments
Banking & Currency
Healthcare
Electric Utilities
Natural Gas
Agribusiness
Energy
Science (R & D)
Science & Aeronautics
Interstate & Foreign Commerce

NEXT WEEK IN FOCUS

The hearing schedule on both sides of the Capital is very thin for next week. This is partly due to the attention being paid to the ITT-Kleindienst hearings and partly to the presidential primary politicking which is in full swing. The announcement of the steep rise in the wholesale price index was disheartening to the Administration coming as it does on the heels of a *status quo* statement several weeks ago regarding unemployment. If the "magic sixes*" roll near election time, Mr. Nixon will have a hard run for a second term in the White House. No doubt the price board will be sorely pressed for firmer action...perhaps phone, gas, and electric rates will be stabilized at the freeze-prices until we get a real diminution of the spiral.

* 6% unemployment, 6% inflation.

* * * * *

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File

SOFT LENSES MAY GET A HARD LOOK

Senator Thomas J. McIntyre (Dem. New Hampshire) and his Subcommittee on Governmental Regulation of the Senate Select Committee on Small Business are looking into the possibility of having hearings on the soft lens industry. To be answered would certainly be questions of monopoly, federal regulation, the adequacy of FDA's approval of Bausch and Lomb's Softlens advertising, promotion, and competition. The Senator has just undergone surgery, so hearings, at the earliest, could not start until late April or early May.

* * * * *

MORE ON O.T.C. DRUGS

Senator Gaylord Nelson (Dem-Wisconsin) has tentatively set aside hearing dates of May 9 and 10, and June 20,21, and 22 for his subcommittee of the Senate Select Committee on Small Business. Topics to be covered include: Federal drug procurement policies, over-the-counter drugs, cold remedies, gastro-intestinal products, feminine deodorant sprays, mouth wash, and topical ointment.

* * * * *

AVAILABLE MATERIALS

Pollution

Development of Systems to Attain Established Motor Vehicle and Engine Emission Standards. Report of the Administrator of the Environmental Protection Agency.

Atomic Energy

AEC Licensing Procedure and Related Legislation, Hearings Before the Subcommittee on Legislation of the Joint Committee on Atomic Energy, Congress of the United States. Parts 1-4.

Balance-of-Payments

The Balance-of-Payments Mess, Hearings Before the Subcommittee on International Exchange and Payments of the Joint Economic Committee.

Banking & Currency

Par Value Modification Act, Hearings Before the Committee on Banking, Housing and Urban Affairs, U. S. Senate.

Basic Laws and Authorities on Housing and Urban Development, Committee on Banking and Currency, House of Representatives.

Healthcare

Characteristics of State Medical Assistance Programs Under Title XIX of Social Security Act, U.S. Department of Health, Education and Welfare.

Electric Utilities

Statistics of Privately Owned Electric Utilities in the United States,

Defense

100 Companies Receiving the Largest Dollar Volume of Prime Contract Awa
Fiscal Year 1971

500 Contractors Receiving the Largest Dollar Volume of Military Prime C
Awards

Natural Gas

Hearings on Natural Gas Supply, Before the Committee on Interior and In
Affairs, U.S. Senate.

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the securities discussed. Edwards & Hanly, or one or more of its partners or employees, may have positions in, and may, as principal or agent, buy or sell such

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Agribusiness

Hearings on Corporate Secrecy and Agribusiness, Before the Subcommittee on Monopoly of the Select Committee on Small Business, U. S. Senate.

Energy

Hearings on National Fuels and Energy Policies, Before the Committee on Interior and Insular Affairs, U.S. Senate.

Goals and Objectives of Federal Agencies in Fuels and Energy, Presented to same as above.

Science, Research & Development

Open Hearing on the National Science Foundation Authorization FY 1973 H.R. 12753, Before the Subcommittee on Science, Research, and Development Committee on Science and Astronautics, U.S. House of Representatives.

Science & Aeronautics

Hearings on Aeronautics and Space Technology (Use of nuclear energy in space Before the Subcommittee on Aeronautics and Space Technology, House of Representatives.

Interstate and Foreign Commerce

Hearings on International Air Fares and High-Speed Ground Transportation Extension.

* * * * *

HEARING CALENDER

U.S. Senate

Banking, Housing and Urban Affairs: Export Control Bill: 3/13-14 10:00 am Rm 5302 N.S.O.B.

Commerce: Solid Waste Packaging: 3/13 9:30 am Rm 5110 N.S.O.B.
Surface Transportation Act: 3/15 11:00 am Rm 457 O.S.O.B.
Transportation Planning: 3/16 10:00 am Rm 5110 N.S.O.B.

Public Works: Clean Air Amendment, Gas Power Internal Combustion Engines: 3/14 Rm 4200 N.S.O.B. 9:30 am

House of Representatives

Interstate and Foreign Commerce: Problems of the Security Business: 3/14-16 10:00 am Rayburn Rm 2322

Science and Aeronautics: NASA: 3/14 & 16 10:00 am Rm 2318 Rayburn

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Reuters

3/15/72

WARNER-LAMBERT AND FRIGITRONICS SAY DISCUSSIONS FOR WARNER-LAMBERT TO DISTRIBUTE THE GRIFFIN SOFT CONTACT LENS ARE PROGRESSING SATISFACTORILY.

REUTER 1558

-WARNER-LAMBERT, FRIGITRONICS CONTINUE DISCUSSIONS

MORRIS PLAINS, N.J MARCH 15 - WARNER-LAMBERT CO AND FRIGITRONICS INC SAID THAT PREVIOUSLY ANNOUNCED DISCUSSIONS CONCERNING THE MANUFACTURE AND DISTRIBUTION OF THE GRIFFIN SOFT HYDROPHILIC CONTACT LENS BY WARNER LAMBERT AND ITS SUBSIDIARIES ARE PROGRESSING SATISFACTORILY.

"IT IS HOPED THAT SOME ACCORD MAY BE REACHED IN THE NEAR FUTURE," THEY SAID.

THE DISCUSSIONS STARTED IN SEPTEMBER 1971. THE COMPANIES DECLINED TO RELEASE FURTHER DETAILS.

REUTER 1636

4Ks 11

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AFTER COMPLETION OF AN AUDIT FOR THE FISCAL FIRST HALF ENDED FEB 29.
OF THE SHARES TO BE OFFERED 400 000 WILL BE ISSUED BY THE COMPANY WITH THE PROCEEDS BEING USED PRIMARILY TO REPAY A PORTION OF ABOUT $13.5 MILLION OUTSTANDING OF 4.75 PC OF FLOOR PLAN NOTES.
-- 4 09 PM EST

-MICHIGAN GENERAL CORP - - 1971 NET $1 735 194 OR 33C A SHR VS OPER NET $1 445 661 OR 30C. THE 1970 NET WAS BEFORE SPECIAL CREDIT OF $328 900 OR NINE CTS MAKING TOTAL NET $1 774 561 OR 39C.
SALES $91 572 406 VS $70 132 014.
-0- 4 10 PM EST

-WARNER-LAMBERT SAYS DISCUSSIONS WITH FRIGITRONICS PROGRESSING

MORRIS PLAINS N J -DJ- WARNER-LAMBERT CO AND FRIGITRONICS INC ANNOUNCED JOINTLY THAT PREVIOUSLY-ANNOUNCED DISCUSSIONS CONCERNING THE MANUFACTURE AND DISTRIBUTION OF THE GRIFFIN SOFT HYDROPHILIC CONTACT LENS BY WARNER-LAMBERT AND ITS SUBSIDIARIES ARE PROGRESSING SATISFACTORILY.
-0- 4 11 PM EST

DX 90

0396

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3/16

NYSE BLOCKS

SONY CORP 50,000 AT 33-1/4, UP 1/8
HOUSTON LIGHTING AND POWER CO. 36,800 AT 46 UNCH
BAUSCH AND LOMB INC 75,000 133, OFF FOUR
HELMERICH AND PAYNE INC 19,900 AT 31-1/4 UP 1/2
ROYAL DUTCH PETE 20,000 AT 36-1/4, OFF 1/4

STANDOOR DPG

IND 119.56 OFF 0.15
RAILS 47.35 UNCH
UTIL 58.09 OFF 0.02
STOCKS 107.62 OFF 0.13

REUTER 1100

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SEIDEN AND DE CUEVAS INC CROSSED 75,000 SHARES BAUSCH AND LOMB AT 133 OFF FOUR.

1100

SLOPPY PERFORMANCE INDICATES IT HAS ENTERED INTO A "BASE BUILDING PROCESS", WHICH HE SAID COULD MEAN THAT TECHNICAL FACTORS, AT LEAST FOR TIME BEING, WILL HAVE GREATER MARKET IMPACT THAN ANY EXTERNAL NEWS.

AN ITEM, HOWEVER, THAT APPARENTLY IS OF SOME CONCERN TO WALL STREET IS A FEAR THAT THE NATION S MONETARY AUTHORITIES MAY BE SHIFTING TO A MORE RESTRICTIVE MONEY POLICY. "THIS IS TENDING TO EMPBER ENTHUSIASM," SAID ONE ANALYST.

BRUSCH AND LOMB, WHICH DROPPED MORE THAN EIGHT POINTS YESTERDAY CONTINUED TO LOSE GROUND. IT WAS OFF ANOTHER 5-3/4 AT 131-1/4. THE FIRM SAID YESTERDAY IT KNEW OF NO REASON FOR THE STOCK S SETBACK.

REUTER 1118

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Reuter 3/16/72

NYSE HALT

LEASEWAY TRANSPORTATION, NEWS PENDING, LAST 48

REUTER 1128
--

SALOMON BROTHERS CROSSED 81,000 SHARES OF BAUSCH AND LOMB AT 130 OFF SEVEN.

REUTER 1128
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NATIONAL PATENT DEVELOPMENT CORP

1971
NET 1,450,108 VS LOSS 182,875
SHR 56 CTS VS LOSS EIGHT CTS
SALES AND REVS 3.7 MLN VS 1.7 MLN

NET INCLUDES EXTRAORDINARY GAINS PRIMARILY FROM SECURITIES SALES EQUAL 1.05 DLRS SHR VS TWO CTS.

REUTER 1632

STOCKS-CLOSING (2)

BAUSCH AND LOMB, WHICH DROPPED MORE THAN EIGHT POINTS WEDNESDAY, TOOK ANOTHER PUMMELING. IT LOST 11-3/4 TO 125-1/4.

COMMENTING ON THE PLUNGE IN B AND L'S STOCK, ONE ANALYST SAID "IT IS A VERY VOLATILE STOCK AND MAY BE OVER-VALUED." HE ADDED, HOWEVER, THAT IT WAS LIKELY TO REMAIN OVER-VALUED BECAUSE "IT IS KIND OF A VOGUE STOCK."

A COMPANY SPOKESMAN SAID WEDNESDAY HE KNEW OF NO REASON FOR THE STOCK'S DROP. EARLIER IN THE WEEK, A CONGRESSIONAL SOURCE SAID A SENATE PANEL HAS STARTED A PRELIMINARY INVESTIGATION INTO THE MARKETING OF THE NEW SOFT CONTACT LENS PRODUCED BY BAUSCH AND LOMB.

SEVERAL ANALSTS SAID THIS DEVELOPMENT TENDED TO DAMPEN INVESTOR SENTIMENT FOR THE ISSUE.

DX 93

0399

BAUSCH & LOMB - March 16, 1972 Hourly
Trading Summaries

	10-11	11-12	12-1	1-2	2-3	3-3 30
First	137	131	127	126-3/4	126	129
Last	131	127	127	126	128-5/8	125-1/4
Trades	103	278	53	66	90	90
Volume	100,700	167,900	24,400	11,900	22,200	20,900

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NEW YORK STOCK EXCHANGE, INC.

0400

MEMORANDUM

TO: Joseph Raftery

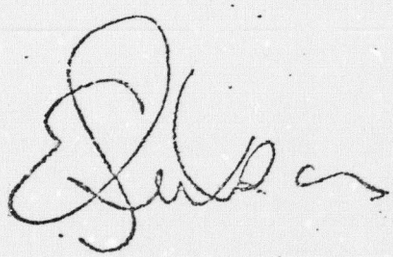
FROM: Edmund Lukas

SUBJECT: Bausch & Lomb

Joe:

The hourly volume for Bausch & Lomb on March 16, 1972 is as follows;

10 - 11	100,700
11 - 12	167,900
12 - 1	24,400
1 - 2	11,900
2 - 3	22,200
3 - 3:30	20,900
Total	348,000 shares



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FAULKNER DAWKINS & SULLIVAN CANCELS 'BUY' RECOMMENDATION ON BAUSCH & LOMB STOCK

0401.

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BY DAN DORFMAN
DON JONES STAFF REPORTER

N Y -DJ- ANOTHER RESEARCH-ORIENTED BROKERAGE CONCERN -FAULKNER DAWKINS & SULLIVAN- HAS CANCELED ITS 'BUY' RECOMMENDATION ON THE SHARES OF BAUSCH & LOMB DON JONES LEARNED.

IN THE PROCESS IT HAS SHARPLY REDUCED ITS EARNINGS ESTIMATES FOR BAUSCH & LOMB FOR THE FIRST QUARTER AND THE FULL YEAR.

THIS ACTION WAS TAKEN BY FAULKNER-DAWKINS FOLLOWING AN INTERVIEW YESTERDAY BY FAULKNER ANALYST DAVID MACCALLUM WITH DANIEL SCHUMAN BAUSCH & LOMB CHAIRMAN.

AT THAT MEETING THE FAULKNER ANALYST WAS ADVISED THAT SOFT-LENS SALES AREN'T SHAPING UP AS WELL AS EXPECTED ACCORDING TO BRIGHT FAULKNER A PARTNER OF FAULKNER-DAWKINS. ALSO MACCALLUM WAS GIVEN AN EARNINGS ESTIMATE BY THE COMPANY - - WHICH HADN'T YET BEEN MADE PUBLIC. THIS ESTIMATE WHICH SCHUMAN CONFIRMED GIVING THE ANALYST WAS 65 TO 75 CENTS A SHARE.

HOWEVER FAULKNER REPORTS THAT THE BROKERAGE CONCERN IS USING A LOWER ESTIMATE OF 60 TO 65 CENTS A SHARE VERSUS A YEAR-EARLIER ADJUSTED 23 CENTS A SHARE. MANY ANALYST HAD BEEN ANTICIPATING EARNINGS OF $1 OR MORE A SHARE. FAULKNER DAWKINS HAD BEEN ESTIMATING 85 TO 90 CENTS A SHARE.

FAULKNER DAWKINS WHICH HAD BEEN PROJECTING NET OF $6 A SHARE IN 1972 HAS NOW CHOPPED THE FIGURE TO $4 PLUS. LAST YEAR BAUSCH & LOMB EARNED $2.70 A SHARE INCLUDING A SPECIAL CREDIT OF 17 CENTS.

ON THE THEORY THAT SUCH AN EARNINGS REDUCTION COULD WELL PUT THE STOCK UNDER FURTHER DURESS FAULKNER SAID- 'IN EFFECT WE'RE TELLING AGGRESSIVE CLIENTS TO SELL THE STOCK.'

RECENTLY SMITH BARNEY CANCELED ITS BUY RECOMMENDATION WHICH HAD A

3-17-72

0402

-SEC TO PROBE YESTERDAY'S TRADING IN BAUSCH & LOMB - NYSE ALSO SEEKS BROKERAGE FIRM'S RECORD OF TRANSACTIONS

BY DAN DORFMAN
DOW JONES STAFF REPORTER

N Y -DJ- THE SECURITIES AND EXCHANGE COMMISSION HAS LAUNCHED AN INVESTIGATION INTO DEVELOPMENTS INVOLVING YESTERDAY'S TRADING ACTIVITY IN THE SHARES OF BAUSCH & LOMB DOW JONES LEARNED.

INFORMED SOURCES REPORT THAT THE SEC HAS CONTACTED FAULKNER DAWKINS & SULLIVAN INVOLVING ITS ROLE IN YESTERDAY'S MARKET ACTIVITIES IN BAUSCH & LOMB IN WHICH THE STOCK PLUMMETED 11 3-4 TO 125 1-4.

THE STOCK WON'T OPEN TODAY. IT HAD BEEN HELD UP EARLIER BECAUSE OF AN ORDER INFLUX.

SPECIFICALLY THE SEC REPORTEDLY IS CENTERING ITS INQUIRY ON TWO AREAS-

- - AN INTERVIEW YESTERDAY BETWEEN FAULKNER DAWKINS & SULLIVAN ANALYST DAVID MAC CALLUM AND DANIEL SCHUMAN BAUSCH & LOMB CHAIRMAN. AT THAT INTERVIEW SCHUMAN GAVE THE ANALYST AN ESTIMATE OF FIRST QUARTER EARNINGS WHICH ALTHOUGH HIGHER THAN YEAR-EARLIER LEVELS WAS CONSIDERABLY BELOW MANY ANALYSTS' EXPECTATIONS.

- - A RUNDOWN OF THE TRANSACTIONS IN THE STOCK THAT TOOK PLACE YESTERDAY AT FAULKNER DAWKINS & SULLIVAN.

FURTHER IT IS BELIEVED THE NEW YORK STOCK EXCHANGE HAS REQUESTED FROM FAULKNER DAWKINS A RECORD OF YESTERDAY'S TRANSACTIONS IN BAUSCH & LOMB'S SHARES.

DWIGHT FAULKNER A PARTNER OF FAULKNER DAWKINS DECLINED COMMENT. SEC & BIG BOARD OFFICIALS WERE NOT IMMEDIATELY AVAILABLE FOR COMMENT.
-0- 2 55 PM EST

KENDALL CO TRADING HALTED - NEWS PENDING - LAST SALE 54 1-2 UP 1 7-8.
-0- 2 56 PM EST

COLGATE-PALMOLIVE TRADING HALTED - NEWS PENDING . LAST TRADE WAS 66 3-4 OFF 1-8.
-0- 2 56 PM EST

-DAYTON-HUDSON CORP YEAR NET $1.52 A SHR VS $1.16

NET $24 654 000 VS $18 970 000.
SALES $1 120 756 000 VS $971 295 000.
BRUCE B DAYTON CHAIRMAN SAID 'WE LOOK FORWARD TO CONTINUED IMPROVEMENT IN THE RETAIL ENVIRONMENT IN 1972.'
-0- 2 58 PM EST

SEC - BAUSCH & LOMB -2-

N Y -DJ- A SPOKESMAN FOR THE NEW YORK STOCK EXCHANGE CONFIRMED THAT THE

DJT 3/1

KENDALL CO TRADING HALTED - NEWS PENDING - LAST SALE 54 1-2 UP 1 7-8.
-0- 2 56 PM EST

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-0- 2 58 PM EST

SEC - BAUSCH & LOMB -2-

N Y -DJ- A SPOKESMAN FOR THE NEW YORK STOCK EXCHANGE CONFIRMED THAT THE BIG BOARD 'IS LOOKING IN TO ALL MATTERS' CONCERNING YESTERDAY'S MARKET ACTION IN THE SHARES OF BAUSCH & LOMB.
-0- 2 59 PM EST

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Financial Chronicle 3-15-72

SEC Examining B&L Nosedive

The Securities Exchange Commission is investigating circumstances of New York Stock Exchange trading in Bausch & Lomb stock on Thursday when the stock dropped 11¾ to 125¼.

The Dow Jones News Service reported yesterday it had learned from informed sources that the SEC's inquiry centers on two areas:

- A purported conversation Thursday between David MacCallum, analyst for the New York brokerage firm of Faulkner, Dawkins and Sullivan, and Daniel Schuman, Bausch & Lomb chairman.
- A rundown of transactions in B&L stock that took place Thursday at Faulkner, Dawkins and Sullivan.

Dow Jones News reported it had been informed that Schuman gave MacCallum an estimate of B&L's first quarter earnings which, although higher than year-earlier levels, were considerably below what many analysts had expected.

The NYSE also is believed to have asked the Faulkner, Dawkins and Sullivan firm for a record of its Thursday transactions in B&L shares, Dow Jones News said.

The company announced publicly yesterday that its earnings for the first quarter ended March 31 should be between 65 and 75 cents a share, up from adjusted earnings of 28 cents a share from the 1971 first quarter.

The announcement came from Schuman, who also said first quarter operations this year have been affected by postponement of the introduction of the aphakic Soflens contact lenses for post-cataract patients.

Shipments are expected to begin in the second quarter,

MINNEAPOLIS, MINN.
(e) 302,000

MAR 18 1972

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0405

207

Optical-stock due for probes

Chicago Daily News Service

NEW YORK, N.Y.—The fall of Bausch & Lomb continues, with the skids greased this week by reports of pending Securities and Exchange Commission and New York Stock Exchange investigations of trading activity in Bausch & Lomb stock, and also by a brokerage house's removal of its "buy" order on the stock.

Bausch & Lomb, which hit an all-time high of $194.75 in the last week of January, closed this week at $125.25. It was the fifth biggest loser on the NYSE, dropping 13.6 percent. The stock did not open yesterday because of an influx of orders.

The Dow Jones News Service reported yesterday that the SEC and NYSE have contacted the brokerage house of Faulkner, Dawkins & Sullivan about its role in Thursday's market activity, when Bausch & Lomb stock plummeted $11.75.

That same day, Bausch & Lomb Chairman Daniel Schuman told a Faulkner, Dawkins analyst that the company's soft contact lens sales were not shaping up as well as expected. The brokerage house then sharply reduced its earnings estimates for Bausch & Lomb in the first quarter and the full year, and removed its "buy" recommendation.

The sharp downward spiral of Bausch & Lomb stock started in late February when Smith, Barney & Co. canceled its "buy" recommendation.

The brokerage house lowered its first-quarter earnings estimate for Bausch & Lomb to between 60 and 65 cents a share, against an adjusted, year-earlier total of 28 cents a share. Many analysts had expected earnings of $1 or more a share. For the full year, Faulkner, Dawkins chopped its earnings estimate to $4 a share from $6 a share.

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NEW YORK POST
NEW YORK, N. Y.
(e) 333,000 (M) 275,000

207

MAR 18 1972

CLIPPED BY BACON'S

Bausch & Lomb Slides

By STEVEN YAHN

The fall of Bausch & Lomb continues, with the skids greased this week by reports of pending Securities and Exchange Commission and New York Stock Exchange investigations of trading activity in Bausch & Lomb stock, and also by a brokerage house's removal of its "buy" order on the stock.

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The sharp downward spiral of Bausch & Lomb stock started in late February when Smith, Barney & Co. canceled its "buy" recommendation. Faulkner, Dawkins, although negative on Bausch & Lomb for the near term, said "We continue to view thee soft lens as an exciting product in the market place."

The brokerage house lowered its first-quarter earnings estimate for Bausch & Lomb to between 60 and 65 cents a share, against an adjusted, year-earlier total of 28 cents a share. Many analysts had expected earnings of $1 or more a share. For the full year, Faulkner, Dawkins chopped its earnings estimate to $4 a share from $6 a share.

Union Corp., another volatile stock in the soft contact lens field, was the third-biggest NYSE loser, falling 14 per cent to $12.25. Union Corp. is seeking Food and Drug Administration approval to test its soft, water-absorbing contact lens. Presently, Bausch & Lomb is the only company with FDA approval to market the soft lens.

ORLANDO, FLA.
(m) 110,000 (S) 152,000

MAR 18 1972

CLIPPED BY BACON'S

TORONTO DAILY STAR
TORONTO, ONTARIO, CANADA
(e) 345,000

MAR 18 1972

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207

Bausch & Lomb Trading Probed

Dow Jones News Service

NEW YORK — The Securities and Exchange Commission has launched an investigation into developments involving Thursday's trading activity in the shares of Bausch & Lomb, Dow Jones learned.

Informed sources report that the SEC has contacted Faulkner, Dawkins & Sullivan involving its role in Thursday's market activities in Bausch & Lomb in which the stock plummeted 11¾ to 125¼.

THE STOCK did not open Friday. It had been held up earlier because of an order influx.

Specifically, the SEC reportedly is centering its inquiry on two areas — an interview Thursday between Faulkner, Dawkins & Sullivan analyst David MacCallum and Daniel Schuman, Bausch & Lomb chairman. At that interview, Schuman gave the analyst an estimate of first quarter earnings which although higher than year-earlier levels, was considerably below many analysts' expectations.

— A rundown of the transactions in the stock that took place Thursday at Faulkner, Dawkins & Sullivan.

FURTHER, it is believed the New York Stock Exchange has requested from Faulkner, Dawkins a record of Thursday's transactions in Bausch & Lomb's shares.

Dwight Faulkner, a partner of Faulkner Dawkins declined comment.

A spokesman for the New York Stock Exchange confirmed that the Big Board "is looking into all matters" concerning Thursday's market action in the shares of Bausch & Lomb.//

207

Bausch trading probe reported in New York

NEW YORK (DJ) — The U.S. Securities and Exchange Commission is investigating trading activity in Bausch and Lomb shares, Dow Jones news service reported yesterday.

The commission said it had no comment, but the New York Stock Exchange revealed that it is "looking into all matters" concerning Thursday's trading in the stock.

The stock has been a market feature for many months, having been one of the biggest winners of 1971.

The company is a major maker of soft contact lenses, a product which has been both biterly criticized and stoutly defended.

Informed sources said the securities commission has contacted stockbroker Faulkner Dawkins and Sullivan about its role in the day's trading. The shares plunged $11.75 to $125.25 on the NYSE Thursday; there was no trading yesterday.

The Faulkner Dawkins firm yesterday withdrew its "buy" recommendation on the stock.//

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LOS ANGELES TIMES
LOS ANGELES, CALIF.
(m) 830,000 (S) 1,177,000

MAR 18 1972 CLIPPED BY BACON'S

Trading Halted in Bausch & Lomb as SEC Probe Looms

BY JOHN F. LYONS
Times Staff Writer

Bausch & Lomb, Inc., one of the hottest stocks of the 1971-72 market, cooled off considerably Friday.

In a rapid series of developments, trading in the stock was suspended, the Securities & Exchange Commission launched a probe into B&L's trading activity and an institutional research securities firm issued a negative report on the company.

The Rochester-based optical company had startled the investment community as its stock rose to $194.75 from $46.37 within a year. But Thursday the stock plummeted $11.75 a share to 125¼. The Big Board did not allow the stock to trade Friday.

Product Problems

Much of the "go-go power" in Bausch & Lomb's stock rise was attributed to the company's success in developing a soft contact lens. This product dubbed a "Soflens," was made of a plastic type material that eliminated some of the problems of traditional contact lenses. But some critics charged that the lenses absorbed moisture, making them prone to bacterial infection.

Whatever the advantages of the soft lens, Bausch & Lomb postponed shipments of a series of Soflens designed for post-cataract patients. In addition, the company said that shipments of some Soflens kits will not commence until April. In addition, the reordering of Soflens products by some dealers slowed considerably from their earlier rate.

The most recent development leading to suspension of the stock involved Bausch & Lomb's earnings prospects, which were sharply reduced for the first quarter and the full year.

Faulkner Dawkins, a New York brokerage firm, estimated that the optical concern is earning 60 to 65 cents a share in the first quarter from a year earlier estimate of 28 cents a share. But many analysts had been anticipating earnings of $1

ROCKY MOUNTAIN NEWS
DENVER, COLO.
(m) 191,000 (S) 192,000

MAR 18 1972 CLIPPED BY BACON'S

NYSE to probe Bausch & Lomb dip

NEW YORK (UPI)—The New York Stock Exchange disclosed Friday it is investigating an 11¾ point plunge in the stock of Bausch & Lomb Inc. on Thursday following an interview with the company's chairman by a security analyst.

In Washington, the Securities & Exchange Commission refused to confirm published reports it is investigating the matter.

The stock did not open Friday.

The Thursday drop came after Bausch & Lomb chairman Daniel Schuman told David McCallum, analyst for the Wall Street firm, Faulkner, Dawkins & Sullivan, the company's earnings for the first quarter this year would be between 65 and 75 cents a share. Although this compared with only 28 cents a share a year earlier, it was considerably below previous forecasts by security analysts.

Friday Bausch & Lomb officials in Rochester said the less favorable earnings for the quarter have been caused by postponement in the introduction of the aphatic series of soft contact lenses for post cataract patients and delays in shipments of smaller sizes of practitioners' soft lens kits for a variety of reasons.

The company also said the public seems to have many misconceptions about soft contact lenses and this has been an adverse factor on its business.

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LONG ISLAND PRESS
JAMAICA, N. Y.
(e) 333,400 (S) 399,800

MAR 18 1972

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0408

207

Stock Winners and Losers

It's Still Downhill For Bausch & Lomb

The fall of Bausch & Lomb continues, with the skids greased this week by reports of pending Securities and Exchange Commission and New York Stock Exchange investigations of trading activity in Bausch & Lomb stock, and also by a brokerage house's removal of its "buy" order on the stock.

Bausch & Lomb, which hit an all-time high of $194.75 in the last week of January, closed this week at $125.25. It was the fifth biggest loser on the NYSE, dropping 13.6 per cent. The stock did not op[illegible] yesterday because of an influx of or[illegible].

Dow Jones News Service reported yesterday that the SEC and NYSE have contacted the brokerage house of Faulkner, Dawkins & Sullivan about its role in Thursday's market activity, when Bausch & Lomb stock plummeted $11.75.

That same day, Bausch & Lomb Chairman Daniel Schuman told a Faulkner, Dawkins analyst that the company's soft contact lens sales were not shaping up as well as expected. The brokerage house then sharply reduced its earnings estimates for Bausch & Lomb in the first quarter and the full year, and removed its "buy" recommendation.

* * *

THE SHARP downward spiral of Bausch & Lomb stock started in late February when Smith, Barney & Co. cancelled its "buy" recommendation. Faulkner, Dawkins, although negative on Bausch & Lomb for the near-term, said, "We continue to view the soft lens as an exciting product in the market place."

The brokerage house lowered its first-quarter earnings estimate for Bausch & Lomb to between 60 and 65 cents a share, against an adjusted, year-earlier total of 2[illegible] cents a share. Many analysts had e[illegible]ted earnings of $1 or more a share. For the full year, Faulkner, Dawkins chopped its earnings estimate to $4 a share from $6 a share.

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This entire article appears under following headlines.

THE EVENING PRESS
BINGHAMTON, N. Y.
(e) 77,000 (S) 75,000

MAR 19 1972

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WINNERS & LOSERS

207

SEC Greasing Skids Of Bausch & Lomb

By STEVEN YAHN
The Press—Chicago Daily News

The fall of Bausch & Lomb continues, with the skids greased this week by reports of pending Securities and Exchange Commission and New York Exchange investigations of trading activity in Bausch & Lomb stock, and also by a brokerage house's removal of its "buy" order on the stock.

66666

THE DETROIT FREE PRESS
DETROIT, MICH.
(m) 570,000 (S) 940,000

MAR 19 1972 (CLIPPED BY 3 JOCKS)

0409

207

LAST WEEK'S WINNERS AND LOSERS

Probes Add to Bausch & Lomb Woe

Free Press Chicago News Service

The fall of Bausch & Lomb continues, with the skids greased this past week the reports of pending investigations by the Securities and Exchange Commission and the New York Stock Exchange into trading activity in Bausch & Lomb stock, and also by a brokerage house's removal of its "buy" order on the stock.

Bausch & Lomb which hit an all-time high of $134.75 in the last week of January, closed Thursday at $125.25. It was the fifth biggest loser on the NYSE, dropping 13.6 percent. The stock did not open Friday because of an influx of orders.

Dow Jones News Service reported Friday that the SEC and NYSE have contacted the brokerage house of Faulkner, Dawkins & Sullivan about its role in Thursday's market activity, when B & L stock plummeted $11.75.

That same day, B & L Chairman Daniel Schuman told a Faulkner, Dawkins analyst that the company's soft contact lens sales were not shaping up as well as expected. The brokerage house the sharpling reduced its earnings estimates for B & L in the first quarter and the full year, and removed its "Buy" recommendation.

The B & L plunge started in late February when Smith, Barney & Co. cancelled its "buy" recommendation. Faulkner, Dawkins, although negative on B & L for short term profits, said: "We continue to view the soft lens as an exciting product in the marketplace."

The brokerage house lowered its first-quarter earnings estimate for B & L to between 60 and 65 cents a share from the $1 many analysts had expected. For the full year, Faulkner, Dawkins chopped its estimate to $4 a share from $6 a share.

Union Corp., another volatile stock in the soft contact ion field was the third-biggest NYSE loser, falling 14 percent to $12.25 Union Corp. is seeking Food and Drug Administration approval to test its soft, water-absorbing contact lens. At present B & L is the only company with FDA approval to market the soft lens.

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CHICAGO DAILY NEWS
CHICAGO, ILL.
(e) 423,000
MAR 19 1972

207

Probe reports hurt Bausch & Lomb

By Steven Yahn

The fall of Bausch & Lomb continues, with the skids greased this week by reports of pending Securities and Exchange Commission and New York Stock Exchange investigations of trading activity in Bausch & Lomb stock, and also by a brokerage house's removal of its "buy" order on the stock.

Bausch & Lomb, which hit an all-time high of $194.75 in the last week of January, closed this week at $125.25. It was the fifth biggest loser on the NYSE, dropping 13.6 per cent.

Dow Jones News Service reported Friday that the SEC and NYSE have contacted the brokerage house of Faulkner, Dawkins & Sullivan about its role in Thursday's market activity, when Bausch & Lomb stock plummeted $11.75.

That same day, Bausch & Lomb chairman Daniel Schu[illegible]n told a Faulkner, Dawkins analyst that the company's soft contact lens sales were not shaping up as well as expected. The brokerage house then sharply reduced its earnings estimates for Bausch & Lomb in the first quarter and the full year, and removed its "buy" recommendation.

The sharp downward spiral of Bausch & Lomb stock started in late February when Smith, Barney & Co. canceled its "hurd" recommendation. Faulkner, Dawkins, although nega-

estimate for Bausch & Lomb to between 60 and 65 cents a share, against an adjusted, year-earlier total of 28 cents a share. Many analysts had expected earnings of $1 or more a share. For the full year, Faulkner, Dawkins chopped its earnings estimate to $4 a share from $6 a share.

Another soft lens loser

Union Corp., another volatile stock in the soft contact lens field, was the third-biggest NYSE loser, falling 14 per cent to $12.25. Union Corp. is seeking Food and Drug Administration approval to test its soft, water-absorbing contact lens. Presently, Bausch & Lomb is the only company with FDA approval to market the soft lens.

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HERALD-EXAMINER
LOS ANGELES, CALIF.
(e) 721,000 (S) 740,000

MAR 20 1972

207

Bausch & Lomb Inquiry? 'No Comment,' Says SEC

—Herald-Examiner Wire Dispatches

NEW YORK—The Securities and Exchange Commission today kept tightly drawn the veil of secrecy concerning reports that it has launched an investigation of Bausch & Lomb, Inc.

An SEC spokesman said "nobody from the commission has made any statements about Bausch & Lomb and we have no comment on it."

Informed sources, however, say the SEC has started an investigation into developments involving trading activity in the shares of the New York based integrated manufacturer of ophthalmic products and scientific instruments.

The SEC reportedly has contacted Faulkner, Dawkins & Sullivan involving its role in market activities last Thursday in which the stock of Bausch & Lomb [illegible]nated 11¾ to 12¾.

The stock didn't open Friday. It had been held up earlier because of an order influx.

A spokesman for the New York Stock Exchange confirmed that the big board "is looking into all matters" concerning market action in the shares.

Specifically, the SEC reportedly is centering its inquiry on two areas:

— An interview Thursday between Faulkner, Dawkins & Sullivan analyst David Mac Callum and Daniel Schuman, Bausch & Lomb chairman. At that interview Schuman gave the analyst an estimate of first quarter earnings which, although higher than year-earlier levels, was considerably below many analysts' expectations.

— A rundown of the transactions in the stock that took place Thursday at Faulkner, Dawkins & Sullivan.

Further, it is believed the New York Stock Exchange has requested from Faulkner Dawkins a record of Thursday's transactions in Bausch & Lomb's shares.

Dwight Faulkner, a partner of Faulkner Dawkins, declined comment.

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CHICAGO TODAY
CHICAGO, ILLINOIS
(e) 443,800 (S) 507,200

MAR 20 1972

207

Bausch & Lomb trade probed

An investigation into developments leading to recent heavy trading in Bausch & Lomb stock has been launched by the SEC. The inquiry will center on bearish statements issued by Faulkner, Dawkins & Sullivan, a brokerage firm, and trading by that firm.

THE DENVER POST
DENVER, COLORADO
(e) 261,400 (S) 354,500

MAR 20 1972

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0412

WINNERS AND LOSERS

Pending Investigations Grease Skids for Bausch & Lom

(C) 1972, Denver Post-Chicago Daily News

NEW YORK—The fall of Bausch & Lomb continues, with the skids greased last week by reports of pending Securities and Exchange Commission and New York Stock Exchange investigations of trading activity in Bausch & Lomb stock, and also by a brokerage house's removal of its "buy" order on the stock.

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W.S.J. 3-23-72

Heard on the Street

By DAN DORFMAN

Just about any digging analyst worth his salt is bound to walk away with some juicy tidbit after a lengthy interview with corporate management.

But the key question, confusing to a lot of people, is: Just what is or isn't inside information? And further, what are the do's and don'ts, as far as a brokerage firm is concerned, about acting on information that hasn't been disseminated to the general public?

The whole subject of inside information once again has been boldly thrust into the Wall Street spotlight following disclosure that the Securities and Exchange Commission is investigating such a case involving Bausch & Lomb. Specifically, the SEC is studying recent developments relating to an interview in which a top Bausch & Lomb official told a Faulkner, Dawkins & Sullivan analyst that its first quarter net would be lower than Wall Street expectations. Moreover, the analyst was given a specific estimate for the period, which hadn't yet been made public.

Forgetting the Bausch & Lomb situation, the question is: What is an analyst supposed to do with information he gets from an interview? Afterall, hundreds of such interviews occur every day. And they often figure prominently in making investment decisions. It isn't any secret that many corporate managements, anxious for a better stock price, aren't at all averse to giving the analyst a good fix on earnings if it's a rosy picture. By the same token, where there are close relationships and big stock positions involved, it isn't unusual for some analysts to be apprised in advance when corporate earnings aren't shaping up as expected.

What, then, is the analyst supposed to do?

One top official of the SEC says the law is quite clear. He points out that if an analyst obtains material, nonpublic information, "he can't use it, (in terms of buying or selling a stock) in any way until there's public disclosure of the information. To do so would be a violation of the 10-b-5 rule (pertaining to inside information) under the Securities Exchange Act of 1934."

He further notes that corporations also would be liable for selective disclosure.

Should an analyst obtain material, nonpublic information, he should keep it confidential, the SEC official says. "It's a question of equity," he adds. "Everybody should have the same information. What they do with it after disclosure, how they interpret it, is another matter."

But some analysts argue that the SEC interpretation may be restricting them from discharging their full responsibility.

As one analyst puts it: "Who am I working for—the brokerage concern which pays me, and its customers, or the investing public at large? If I can't use the information I get, what's the point of going to see a company? No analyst, at least one who is alive, is going to talk to a company without getting at least some 'inside information.'"

Says one top partner of a research-oriented brokerage concern: "You're talking about a gray area when you talk about inside information. There aren't any clear set of rules that cover every phase of information. Obviously, you can't play games with earnings or merger information that hasn't been released. But what happens on the golf course when an executive tells a friend about better-than-expected earnings? Is this inside information?"

Continues the Wall Street official: "As far as meetings are concerned between management and one analyst, I don't know if there is an answer that would please everybody with regard to disclosure rules. Maybe the company should follow up with a release after the interview. But here again, this is a difficult area to interpret. What might be relevant to an analyst might mean nothing to John Q. Public."

Probably the most sensitive area in dealing with inside information is the question of earnings. Just about every analyst plays the "numbers game." This is where an analyst will toss out an earning estimate in the hopes of getting management to say "it's in the ball park." And then he'll shade or increase his estimate accordingly, depending on management's reaction, in an effort to zero in on the figure. Many companies will respond favorably to this, with some rationalizing it by saying they don't want to see a brokerage concern going into print with a misleading high or low estimate. Are they giving analysts inside information?

Stanley A. Nabi, a partner of Schweickart & Co. and president of the New York Society of Security Analysts, says they aren't, provided the companies aren't confining such information to a chosen few. "And if you tell me the public doesn't know the information and I do, I'm telling you that I'm paid to be a professional analyst, not a doctor or lawyer, and I am exercising my rights to professional inquiries," Mr. Nabi asserts. He further argues that he doesn't regard as "inside information" such data as the current sales trends of the company, a breakdown of the performances of the different divisions, or the state of the industries in which it's engaged—again, provided it's available to all.

Mr. Nabi complains that analysts are viewed by much of the public as "tipsters," and this isn't the case, he declares. An analyst doesn't have to have inside information to do his job, he declares. What he's looking for is a feel for management and its philosophies.

Says one official in an investigatory position at one of the stock exchanges: "I can appreciate what analysts are trying to do. But for a company to indicate to one analyst what its earnings are and nobody else is unpardonable. It should make a general release. And if it doesn't, I better not hear about it."

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-VULCAN INC--1971 NET $693 000 OR 25C A SHR VS $767 000 OR 30C. SALES $39 055 000 VS $41 433 000.
-0- 3 39 PM EST

DOW JONES COMMODITY FUTURES INDEX
OPEN HIGH LOW CLOSE
146.33 146.60 146.33 146.60 UP 0.45
-0- 3 39 PM EST

DOW JONES SPOT COMMODITY PRICE INDEX
CLOSED AT 149.45 UP 0.05
-0- 3 40 PM EST

THE NYSE TAPE WAS ONE MINUTE LATE AT THE BELL.
-0- 3 40 PM EST

DU PONT CONFIRMS RESEARCH ON CONTACT LENS

WILM -DJ- DU PONT CO CONFIRMED IT IS DEVELOPING A NEW TYPE SOFT CONTACT LENS.

A COMPANY SCIENTIST SAID IT IS POSSIBLE THE NEW LENS MIGHT BE 'FULLY' COMMERCIAL WITHIN THREE YEARS.

THE SCIENTIST DESCRIBED THE NEW LENS MATERIAL AS A COMPLEX POLYMER. HE SAID THE POLYMER WAS AN OUTGROWTH OF ONE OF DUPONT'S RESEARCH PROGRAMS.

HE ALSO SAID THAT UNLIKE EXISTING SOFT CONTACT LENSES THE DU PONT LENS DOES NOT ABSORB MOISTURE.

A COMPANY SPOKESMAN SAID THAT IN THE COMPANY'S OPINION THE NEW LENS MATERIAL QUALIFIES AS A HARD RATHER THAN SOFT CONTACT LENS BECAUSE IT DOES NOT ABSORB MOISTURE. THE SPOKESMAN ADDED THAT THE MATERIAL'S PHYSICAL CHARACTERISTICS DIFFER FROM OTHER SOFT LENSES ALREADY DEVELOPED.

HOWEVER THE SPOKESMAN ADDED THAT DU PONT'S LENS MATERIAL 'IS SOMEWHAT PLIABLE.' PLIABILITY IS A CHARACTERISTIC OF SOFT CONTACT LENSES.

THE SPOKESMAN DENIED THAT THE DU PONT LENS IS MADE OUT OF TEFLON.
-0- 3 42 PM EST

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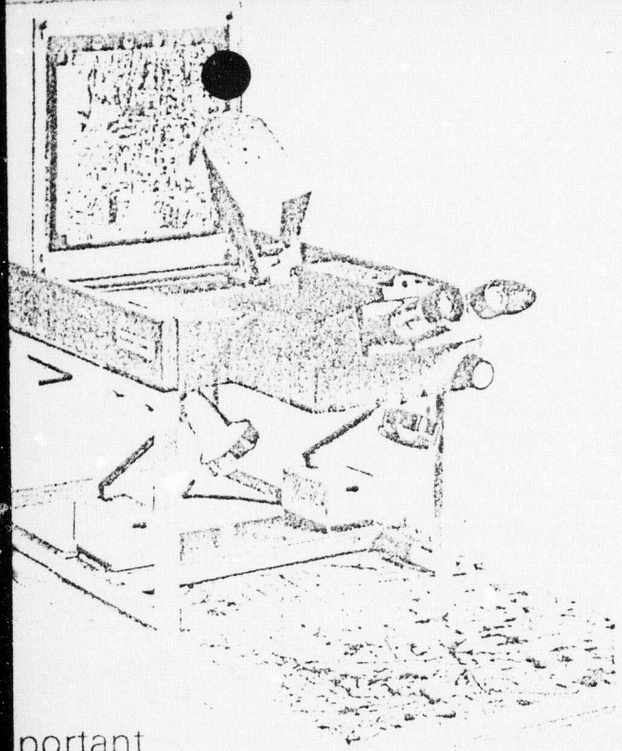

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provement of Man's
vironment, Well-Being

sch & Lomb, a leader in photogrammetry for dec-
s, has just introduced the versatile Zoom Transfer
pe, which has worldwide applications in mapping,
n planning, resource management, pollution mon-
ng, geology, forestry, crop management and many
r applications where remote sensing is used.
sing this compact device, technicians can rapidly
easily transfer or compare information from aerial
tography to produce new maps or update existing
s. The ZTS can also be used to compare new aerial
tographs with older ones to detect and record any
nges revealed on the new film.
pdating city planning maps, monitoring air and
r pollution, measuring forest disease damage re-
ed by infrared photography, estimating the size of
eral deposits are a few of the important capabilities
offers man in his efforts to improve his environ-
t and well-being.

BAUSCH & LOMB

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BAUSCH & LOMB

quarterly report

FIRST NINE MONTHS

1971

0415

lement
earnings

h & Lomb Incorporated and Consolidated Subsidiaries

e Shareholders:

olidated sales for the third quarter ended September 971, were a record $37,506,341, an increase of 12 per- over the figure of $33,399,674 in the same period of

t earnings for the third quarter of $1,685,646 were 57 nt over the $1,075,995 registered last year. Earnings are of common stock, after preferred dividends and on the average number of shares outstanding, assum- ll conversion of debentures, were $.61, compared to n 1970.

nsolidated sales for the nine months ended September re a record $105,536,818, up five percent from the of $100,145,581 in the same period of 1970.

Net earnings for the first nine months of 1971 were $3,739,793, an increase of 15 percent over the $3,261,532 recorded in 1970. Earnings per share for the period were $1.33 in 1971 and $1.18 in 1970.

Sales of the new SOFLENS™ Contact Lens made a very significant contribution to third quarter earnings. Without SOFLENS Contact Lens, earnings would have been moderately below the results of the third quarter of 1970 due to the continuing weak demand for scientific instrument products. Sales of ophthalmic and consumer products continued to show good increases over 1970.

The introduction of the SOFLENS Contact Lens to the eye care professions has proceeded as planned and will be completed on a nationwide basis by the end of November. Sales of the product during this initial stage of the marketing program have been most satisfactory.

Implementation of plans for marketing SOFLENS Contact Lens outside the U. S. continues. Introduction of the lens to eye care professionals will begin in Canada in November and in South America soon afterwards. In early 1972, we anticipate initial marketing of the lens in Europe, Japan and other Far Eastern countries.

In August the Board of Directors approved an agreement in principle under which Bausch & Lomb will acquire Bushnell Optical Company, Pasadena, Calif., for 73,000 shares of B&L common stock. Privately owned, Bushnell is a leading distributor of binoculars and related products with annual sales of about $9 million. It is anticipated that the acquisition will be completed during the fourth quarter.

The Board of Directors also announced in August that Don B. Allen, secretary of the company since 1967, was elected a vice president and that Eugene F. Roberts, previously personnel director, H. J. Heinz, was elected vice president corporate industrial relations. In his newly-created position, Mr. Roberts will be responsible for the planning and policy for all functions of industrial relations on a corporate wide basis.

Chairman of the Board — *President*

Rochester, N. Y.
October 29, 1971

	Third Quarter Ended		Nine Months Ended	
	Sept. 24, 1971	Sept. 25, 1970	Sept. 24, 1971	Sept. 25, 1970
INCOME:				
Products sold	$ 37,506,341	$ 33,399,674	$105,536,818	$100,145,581
Other income	252,259	312,646	904,017	723,464
	37,758,600	33,712,320	106,440,835	100,869,045
COSTS AND EXPENSES:				
Operating costs and expenses	32,771,149	30,130,664	94,049,167	89,535,822
Depreciation of properties	1,058,291	968,774	3,451,013	3,263,614
Interest expense	631,514	731,887	1,812,862	2,048,077
Federal, foreign, and other taxes on income	1,612,000	805,000	3,388,000	2,760,000
	36,072,954	32,636,325	103,701,042	97,607,513
NET EARNINGS FOR THE PERIOD	$ 1,685,646	$ 1,075,995	$ 3,739,793	$ 3,261,532
NET EARNINGS PER SHARE OF COMMON STOCK*	$ .61	$ .39	$ 1.33	$ 1.18

**After preferred dividend requirement and based on average number of shares outstanding (2,728,839 shares in 1971 and 2,696,390 shares in 1970), assuming full conversion of the convertible debentures.*

0416

SIX WEEKS HIGH LOW REPORT

BCL Bausch & Lomb

03/22/72

DAY	OPEN	HIGH	LOW	LAST	TICK	VOLUME	CHANGE
02/10/72	189	189	176 7/8	178	-	36900	
02/11/72	178 1/2	181 3/4	178	178 1/4	+	28100	+ 1/4
WEEK	189	189	176 7/8	178 1/4	+	65000	
02/14/72	178 3/8	181	175 1/2	177	+	20300	- 1 1/4
02/15/72	178	181 1/2	175 7/8	176 1/4	-	21400	- 3/4
02/16/72	176 3/8	186 1/4	176 3/8	185	+	46200	+ 8 3/4
02/17/72	185 3/4	189	184 1/2	185 1/2	+	31300	+ 1/2
02/18/72	186 1/4	187	184	185 3/4	+	13200	+ 1/4
WEEK	178 3/8	189	175 1/2	185 3/4	+	132400	+ 7 1/2
HOLIDAY							
02/22/72	184	186 1/4	181 1/2	185 7/8	+	22300	+ 1/8
02/23/72	171	175 1/2	171	174 1/2	-	85900	-11 3/8
02/24/72	176	177	166 1/4	166 3/4	-	58200	- 7 3/4
02/25/72	166 1/8	172 1/2	164 1/2	170 3/4	-	58800	+ 4
WEEK	184	186 1/4	164 1/2	170 3/4	-	225200	-15
02/28/72	171 1/4	172	167 1/2	168 3/8	+	21300	- 2 3/8
02/29/72	168	169	165	168 1/2	-	21400	+ 1/8
03/01/72	158	159 7/8	151	151	-	120300	-17 1/2
03/02/72	155	156 7/8	153 1/4	154 3/4	+	47500	+ 3 3/4
03/03/72	155 3/4	160 3/4	155 3/4	160	+	47400	+ 5 1/4
WEEK	171 1/4	172	151	160	+	257900	-10 3/4
03/06/72	161 1/2	163 1/4	156	157	+	23600	- 3
03/07/72	158 1/4	158 3/8	152	152	-	26900	- 5
03/08/72	151 1/2	152 1/4	146	148	-	70700	- 4
03/09/72	149 1/2	150	141 1/4	141 1/4	-	66800	- 6 3/4
03/10/72	142 3/4	145 7/8	139 1/4	145	-	68100	+ 3 3/4
WEEK	161 1/2	163 1/4	139 1/4	145	-	256100	-15
03/13/72	144 1/2	149	144	147 3/4	-	24500	+ 2 3/4
03/14/72	149	149	145	145 1/8	+	17400	- 2 5/8
03/15/72	144	144 3/4	136 1/4	137	-	46800	- 8 1/8
03/16/72	137	137 1/8	124 1/2	125 1/4	-	348000	-11 3/4
NO TRADING							
WEEK	144 1/2	149	124 1/2	125 1/4	-	436700	-19 3/4
03/20/72	110	113 3/4	105	105	-	171300	-20 1/4
03/21/72	108	112 3/4	107	111 7/8	+	82000	+ 6 7/8
03/22/72	113 1/4	114 7/8	112 1/4	113	-	44400	+ 1 1/8

DAY	OPEN	HIGH	LOW	LAST	TICK	VOLUME	CHANGE
02/04/72	183 3/4	186 3/8	180 3/4	181 1/4	-	22300	
WEEK	183 3/4	186 3/8	180 3/4	181 1/4	-	22300	
02/07/72	183	184 3/8	180 1/8	181 1/4	-	20800	0
02/08/72	182	187 1/2	182	187 1/2	+	19400	+ 6 1/4
02/09/72	189	191 1/4	186 1/4	188	-	37100	+ 1/2
02/10/72	185	189	176 7/8	178	-	36900	-10
02/11/72	178 1/2	181 3/4	178	178 1/4	+	28100	+ 1/4
WEEK	183	191 1/4	176 7/8	178 1/4	+	141500	- 3
02/14/72	178 3/8	181	175 1/2	177	+	20300	- 1 1/4
02/15/72	178	181 1/2	175 7/8	176 1/4	-	21400	- 3/4
02/16/72	176 3/8	186 1/4	176 3/8	185	+	46200	+ 8 3/4
02/17/72	185 3/4	189	184 1/2	185 1/2	+	31300	+ 1/2
02/18/72	186 1/4	187	184	185 3/4	+	13200	+ 1/4
WEEK	178 3/8	189	175 1/2	185 3/4	+	132400	+ 7 1/2
HOLIDAY							
02/23/72	184	186 1/4	181 1/2	185 7/8	+	22300	+ 1/8
02/23/72	171	175 1/2	171	174 1/2	-	85900	-11 3/8
02/24/72	176	177	166 1/4	166 3/4	-	58200	- 7 3/4
02/25/72	166 1/8	172 1/2	164 1/2	170 3/4	-	58800	+ 4
WEEK	184	186 1/4	164 1/2	170 3/4	-	225200	-15
02/28/72	171 1/4	172	167 1/2	168 3/8	+	21300	- 2 3/8
02/29/72	168	169	165	160 1/2	-	21400	+ 1/8
03/01/72	150	159 7/8	151	151	-	120300	-17 1/2
03/02/72	155	156 7/8	153 1/4	154 3/4	+	47500	+ 3 3/4
03/03/72	155 3/4	160 3/4	155 3/4	160	+	47400	+ 5 1/4
WEEK	171 1/4	172	151	160	+	257900	-10 3/4
03/06/72	161 1/2	163 1/4	156	157	+	23600	- 3
03/07/72	156 1/4	156 3/8	152	152	-	26900	- 5
03/08/72	151 1/2	152 1/4	146	148	-	70700	- 4
03/09/72	149 1/2	150	141 1/4	141 1/4	-	66800	- 6 3/4
03/10/72	142 3/4	145 7/8	139 1/4	145	-	68100	+ 3 3/4
WEEK	161 1/2	163 1/4	139 1/4	145	-	256100	-15
03/13/72	144 1/2	149	144	147 3/4	-	24500	+ 2 3/4
03/14/72	149	149	145	145 1/8	+	17400	- 2 5/8
03/15/72	144	144 3/4	136 1/4	137	-	44600	- 8 1/8
03/16/72	137	137 1/8	124 1/2	125 1/4	-	34[illegible]00	-11 3/4

DATE	DAYS	HIGH	LOW	LAST	TICK	VOLUME	CHANGE
01/28/72	189	194 3/4	186 3/4	193 1/4	+	91400	
WEEK	189	194 3/4	186 3/4	193 1/4	+	91400	
01/31/72	188 1/4	195 1/4	188	185 1/2	+	38300	- 7 3/4
02/01/72	184	188 3/8	183 1/2	187 1/2	-	34100	+ 2
02/02/72	189	190 3/4	184 1/8	184 5/8	+	25300	- 2 7/8
02/03/72	186 1/2	187 1/2	181 1/4	183	+	41100	- 1 5/8
02/04/72	183 3/4	186 3/8	180 3/4	181 1/4	-	22300	- 1 3/4
WEEK	188 1/4	188 1/4	180 3/4	181 1/4	-	161100	-12
02/07/72	183	184 3/8	180 1/8	181 1/4	-	20000	0
02/08/72	182	187 1/2	182	187 1/2	+	19400	+ 6 1/4
02/09/72	182	191 1/4	186 1/4	188	-	37100	+ 1/2
02/10/72	182	189	176 7/8	178	-	36900	-10
02/11/72	176 1/2	181 3/4	178	178 1/4	+	28100	+ 1/4
WEEK	183	191 1/4	176 7/8	178 1/4	+	141900	- 3
02/14/72	178 3/4	181	175 1/2	177	+	20300	- 1 1/4
02/15/72	178	181 1/2	175 7/8	176 1/4	-	21400	- 3/4
02/16/72	176 3/4	186 1/4	176 3/8	185	+	46200	+ 8 3/4
02/17/72	185 3/4	189	184 1/2	185 1/2	+	31300	+ 1/2
02/18/72	186 1/4	187	184	185 3/4	+	13200	+ 1/4
WEEK	178 3/8	189	175 1/2	185 3/4	+	132400	+ 7 1/2
02/21/72							
02/22/72	184	186 1/4	181 1/2	185 7/8	+	22300	+ 1/8
02/23/72	171	175 1/2	171	174 1/2	-	85900	-11 3/8
02/24/72	176	177	166 1/4	166 3/4	-	58200	- 7 3/4
02/25/72	166 1/4	172 1/2	164 1/2	170 3/4	-	58800	+ 4
WEEK	184	186 1/4	164 1/2	170 3/4	-	225200	-15
02/28/72	171 1/4	172	167 1/2	168 3/8	+	21300	- 2 3/8
02/29/72	168	169	165	168 1/2	-	21400	+ 1/8
03/01/72	168	159 7/8	151	151	-	120300	-17 1/2
03/02/72	156	156 7/8	153 1/4	154 3/4	+	47500	+ 3 3/4
03/03/72	155 3/4	160 3/4	155 3/4	160	+	47400	+ 5 1/4
WEEK	171 1/4	172	151	160	+	257900	-10 3/4
03/06/72	161 1/2	163 1/4	156	157	+	23800	- 3
03/07/72	158 1/4	158 3/8	152	152	-	24900	- 5
03/08/72	151 1/2	152 1/4	146	148	-	70700	- 4
03/09/72	149 1/2	150	141 1/4	141 1/4	-	66800	- 6 3/4
03/10/72	142 3/4	145 7/8	139 1/4	145	-	68100	+ 3 3/4
WEEK	161 1/2	163 1/4	139 1/4	145	-	256100	-15
03/13/72	144 1/2	149	144	147 3/4	-	24500	+ 2 3/4
03/14/72	149	149	145	145 1/8	+	17400	- 2 5/8
03/15/72	144	144 3/4	136 1/4	137	-	46800	- 8 1/8
03/16/72	137	137 1/8	124 1/2	125 1/4	-	348000	-11 3/4
NO TRADING							
WEEK	144 1/2	149	124 1/2	125 1/4	-	436700	-19 3/4
03/20/72	110	113 3/4	105	105	-	171300	-20 1/4
03/21/72	106	112 3/4	107	111 7/8	+	82000	+ 6 7/8
03/22/72	113 1/4	114 7/8	112 1/4	113	-	44400	+ 1 1/8
03/23/72	114 1/2	118	114 1/8	117	-	29200	+ 4
03/24/72	117 3/4	119 1/2	117	119 1/4	-	27000	+ 2 1/4
WEEK	110	119 1/2	105	119 1/4	-	353900	- 6
03/27/72	117 3/4	117 7/8	115 3/4	116 1/4	+	21200	- 3
03/28/72	117 1/2	118 1/8	115	115	-	14600	- 1 1/4
03/29/72	115	115	110	110 1/2	-	24100	- 4 1/2
03/30/72	111 5/8	114 3/4	110 1/8	110 1/2	-	16800	0
GOOD FRIDAY							
WEEK	117 3/4	118 1/8	110	110 1/2	-	76700	- 8 3/4
04/03/72	113	114	110 3/4	110 3/4	-	14700	+ 1/4
04/04/72	111 1/2	116 3/4	111 1/2	116 1/2	+	17500	+ 4 3/4
04/05/72	116	123	116 3/4	122 3/8	+	43400	+ 6 1/4

SIX WEEKS HIGH LOW REPORT

SOL

21/27/72

DAY	OPEN	HIGH	LOW	LAST	TICK	VOLUME	CHANG
2/17/71	164 1/2	169 5/8	162 3/4	168 1/4	-	54450	
EEK	164 1/2	169 5/8	162 3/4	168 1/4	-	54450	
2/2[illegible]/71	171 1/2	173	169	169	-	58200	+ 3/
2/21/71	169 1/2	174 1/4	167 1/4	173 1/4	+	54[illegible]	+ 4 1/
2/22/71	174 1/4	176	171 3/4	172 3/4	+	55900	- 1/
2/23/71	171 1/2	174 1/4	169	173 3/8	+	37600	+ 5/
OLIDAY							
EEK	171 1/2	176	167 1/4	173 3/8	+	256100	+ 5 1/
2/27/71	174	176 3/4	173 5/8	178 3/4	+	20400	+ 5 3/8
2/28/71	179 1/4	179	179 1/2	179	+	58500	+1 1/4
3/ 1/71	169 1/2	181 1/4	182 1/4	183	-	32600	- 4
3/ 2/71	182	182	178	178	-	47800	- 5
3/ 3/71	176 1/4	177 1/2	176 1/4	177	-	32500	- 1
EEK	174	181 1/4	173 5/8	177	-	191800	+ 3 5/8

1972

1/3/72	176 1/2	184 3/4	172 3/4	173 3/4	+	39400	- 3 1/4
1/4/72	168	181 1/4	168	181	+	79800	+ 7 1/4
1/5/72	183 1/2	184 1/8	181	182 1/8	+	42900	+ 2 1/8
1/6/72	181 1/2	181 1/2	174	175 1/4	-	89600	- 7 7/8
1/7/72	173 1/2	175 1/4	172	172 1/2	-	34200	- 2 3/4
EEK	178 1/2	184 1/2	168	172 1/2	-	275900	- 4 1/2
1/10/72	172 1/4	174	167	172 1/2	-	70100	-
1/11/72	173 1/2	176	171 1/2	172 3/8	+	29100	- 1/8
1/12/72	172 1/8	173 7/8	166 1/2	166 1/2	-	43600	- 5 7/8
1/13/72	167 1/4	171 5/8	166	167 1/2	-	31500	+ 1
1/14/72	164	164 1/8	158	159	-	130400	- 8 1/2
EEK	172 1/4	176	158	159	-	303700	-13 1/2
1/17/72	160 1/4	171 1/4	158 1/8	170 1/2	+	60600	+11 1/2
1/18/72	172	183	172	176 7/8	-	83200	+ 6 3/8
1/19/72	176	189 7/8	176 1/4	189 7/8	+	79400	+13
1/20/72	185	191 7/8	182 1/2	183 1/8	+	55600	- 6 3/4
1/21/72	181	182 3/4	175	176 1/2	-	55900	- 6 5/8
EEK	164 1/4	191 7/8	158 1/8	176 1/2	-	333700	+17 1/2
1/24/72	177 1/2	179	173 1/4	176 3/4	-	31400	+ 1/4
1/25/72	178 1/4	182 3/4	177	179 1/2	+	46[illegible]	+ 2 3/4
1/26/72	179 1/2	181 3/4	176 1/4	178 3/8	-	157[illegible]	- 1/8
1/27/72	181	187 3/4	181	187 3/4	+	44[illegible]	+ 8 3/8

DEFT. DAVIS EXH. No. 47
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Page

Bausch & Lomb Incorporated
Friday Closing Price on
New York Stock Exchange

4/1
4/2
4/2
5/5
5/1
5/1
5/3
5/2

March 6, 1972

Mrs. Helen Linneman
246 No. Clark Street
Orange, California 92668

Dear Mrs. Linneman:

Thank you so much for your letter of February 23 and your expression of interest in the availability of plus soft contact lenses. We have just recently issued a new price list effective March 1, which advises of the availability of our lenticular series in +9.00 to +18.00 lenses. We expect that these lenses will be available for shipment in approximately six weeks.

At the present time there are no plans to make available a low series below -9.00 although I would expect to see this introduction some time in the late fall of this year.

Sincerely,

John R. Williams
Director of Marketing

JRW:CP

DEFENDANT'S EXH. No. 415
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Page 20

March 7, 1972

Chester M. Rotter, O.D.
5809 Sunset Drive
South Miami, Florida 33143

CONFIDENTIAL

Dear Dr. Rotter:

In response to your letter of January 20th, I am going to have a SOFLENS Representative contact you to answer your many, many questions. I feel he can give you a much better picture of the SOFLENS Program in person than I can via the written word.

I would like to answer a few questions regarding the aphakic fitting set. The aphakic fitting set consists of 17 lenses from plus 9.00 to plus 17.00 in 1/2 diopter steps. These lenses will be available approximately May 1st. The initial set will cost $650 including two training films, if you are already a SOFLENS Customer. The cost of the lenses will be $36.00 per lens. As you may or may not know, the base curve on every SOFLENS Contact Lens varies according to the power of the lens, and therefore, the base curve range is quite "flexible."

We have introduced a new combination package of plus and minus lenses which consists of 33 minus lenses and 17 plus lenses. The lenses range in 1/4 diopter steps from -.50 up to -5.00, and 1/2 diopter steps from -5.50 to -6.00. This might be of interest to you since the price is less than the cost of the original fitting set.

Along with this, we have introduced new financing arrangements so that if it is necessary, you may finance your set over a longer period of time.

Other information you desire I am sure can be obtained from your local SOFLENS Representative, Mr. Ron Robinov. I will be sure he contacts you in the immediate future.

Enclosed please find our latest price sheet and alternative financing plans.

DEFENDANT'S EXH. No. 11-F
Mar[illegible]
Re[illegible]

In response to your question regarding patient insurance, he is protected against loss of lenses or any type of damage to the lenses.

Again, thank you for your interest. We look forward to your becoming a SOFLENS Customer in the near future.

Sincerely,

Geoffrey S. Hoce
Marketing Staff Assistant
SOFLENS Contact Lenses

GSH:kb

Encl.

cc: R. Robinson

Plaintiff's Exhibit No. 11
Identified
Admitted in Evidence
Page C

Dr. Chester N. Potter
OPTOMETRIST
5809 SUNSET DRIVE
SOUTH MIAMI, FLORIDA 33143

January 20th, 1972.

CONFIDENTIAL

Bausch & Lomb
Softlens Division
Rochester, New York, 14602

Gentlemen:

Having attended the Bausch & Lomb Symposium in Orlando, Florida, and familiarizing myself with other hydraphillic materials I have come to the conclusion that at the moment your lenses offer me the most when considering all aspects; however I cannot help but wonder what is to happen in regards to the PLUS lens set? What will be the breakdown in Base Curves? How many pairs of lenses will there be? How much money will that set cost? Will there be Aphakic lenses? How much will they cost? Are refractive changes necessary as often as with eyeglasses? As few changes as with hard contact lenses?

My practice is a nice one, but would probably be considered small, however I have always taken pride in having up to date equipment and up to date services for all of my patients. It would probably take me closer to a year to pay for the original equipment and in three months I would not be, up to date because the Plus lens sets will be coming out.

Your Finance Plan of no interest and six months to pay is very nice, but what will the arrangement be for the plus lenses? Will they be six months or would they be an additional six months (6 + 6 = 12 months). Is there any other financial plan available?

Your brochure of May says that the sets are returnable in thirty days less a charge of five hundred dollars ($500.00). In Orlando we were told that sets are returnable for six months without any deductible charge being made; which is the policy in effect?

When a patient buys insurance is he protected against losing a lens or lenses, or must they break a lens and submit parts thereof as proof of loss? In order to get another lens?

An early reply to each of these questions would be appreciated.

Very truly yours,

Chester N. Potter, O.D.

CNR/hb

January 11, 1972

John R. Mushaw, M.D.
70333 El Paseo
Suite 106
Palm Desert, California 92260

CONFIDENTIAL

Dear Dr. Mushaw:

Thank you for your inquiry regarding the Lenticular Lenses for aphakic patients.

The aphakic lenses will be available for existing SOFLENS Customers by April 1st. All SOFLENS Customers requesting the aphakic fitting set will be supplied the lenses before they are offered to the rest of the ophthalmological and optometric community. You will be notified as to the specific dates in the very near future.

Again, thank you for your interest.

Sincerely,

Marketing Assistant
SOFLENS Contact Lenses

GSlbsa:kb

December 7, 1971

Andrew J. Causey, M.D.
310 North Center Street
Statesville, N.C.

Dear Dr. Causey:

Thank you for your letter of November 26th. I am certainly delighted to hear that you have ordered the SOFLENS Contact Lens Fitting Set.

I regret to inform you that we will not be able to supply you with a pair of aphakic lenses at this time. The reason is that these lenses are not currently available in all powers, therefore, we will wait until we have an ample supply before distributing the aphakic lens series.

I agree with you that there is no better advertisement than having the dispenser wearing the lenses, and, hopefully, we will be able to supply you with your lenses in the near future. At this time, we anticipate the lens will be available in the first quarter of 1972. Please resubmit your request at that time.

Sincerely,

Geoffrey S. Moss
Marketing Assistant
SOFLENS Contact Lenses

GSM:kb

JAN 0 4 RECD

CONFIDENTIAL

January 3, 1972

Dr. Robert H. Pfeiffer
2540 N.E. 9th Street
Fort Lauderdale, Florida 33304

Dear Doctor Pfeiffer:

I understand that your SOFLENS Practitioner's Package has now been installed, and I trust that you have having good success.

We hope to have our aphakic lenses available early this year. I am asking our Marketing Manager, Mr. John Williams, to be sure that these lenses are made available to you at the earliest possible date.

If I can be of assistance to you in any way, in the course of your fitting of our SOFLENS Contact Lenses, please do not hesitate to let me know.

Sincerely,

Technical Director
SOFLENS Division

WFCoombs/crp
Copies to: R. Craytor
J. Williams
R. Brown

DEFENDANT'S EXH. No. 115
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Page 5

Whereupon,

RONALD LABOW,

called as a witness, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION

BY MR. MARTIN:

Q Would you state your full name for the record, please?

A Ronald Labow.

Q Mr. Labow, where do you reside?

A My office address?

Q Residential address.

A Judges Hollow Road, Weston, Connecticut.

Q Is there a number for the address?

A No.

Q Residential phone number, if there is one, sir.

A 226-5152.

Q Are you employed?

A Yes.

Q Who are you employed by?

A I'm general partner in two funds, two private funds.

Q What funds are you a general partner of?

A [illegible] and Cerberus Associ[illegible]

I am also the investment adviser to Vermeer Fund, N.V.

Q Do you have a business address?

A Yes.

Q What is it, please?

A 230 Park Avenue, New York City, New York.

Q What room number?

A 3440.

Q What is your business telephone number?

A 531-9870.

Q When did you become associated with Charon Styx?

A Charon Styx Associates started May of 1971, sir.

Q What is Charon Styx Associates?

A It's a limited partnership that invests principally in securities.

Q Is it a registered institution with the Securities and Exchange Commission?

A No.

Q Is it a hedge fund?

A No.

Q What is it?

A It is a limited partnership investing principally in securities.

Q Had you, on March the 15th, 1972, at the time you indicated to Mr. Furman that you would take cleanup on the block, decided how you would, if at all, solve your substitution margin problem?

A No, I had not.

Q I see.

Did you consider how much stock each entity, namely, Cerberus, Vermeer and Charon Styx, owned on March 15th of Bausch & Lomb, what it had in its portfolios?

A I knew how much they had.

Q Do you recall how much?

A Roughly 100,000 shares, all three accounts combined.

Q What was your next conversation after Mr. Furman, the one you had with Mr. Furman, in which you indicated, in words or substance, you would take the clean-up position?

A I believe I spoke with Mr. Manuchin, a partner at Goldman, Sachs, who indicated to me he was having a great deal of difficulty finding buyers for the stock.

He eventually indicated to me that he wasn't able to do it.

Q Well, was that more than one conversation? Are you giving me two or three?

A Well, it was more than one conversation.

Q Well, did you get back to Mr. Furman and tell him that there were problems relating to this trade?

A I believe I did.

Q Well, do you recall if you did?

A No, I don't.

Q Okay.

Did you have occasion to speak with Mr. Furman on March the 16th, 1972?

A Yes.

Q When for the first time?

A Between nine and ten o'clock on the morning of March 16th.

Q Did he call you or did you call him?

A I called him.

Q By direct wire?

A Yes.

Q I see.

Do you have a trading room in your organization?

A No.

Q Do you have a group of phones? Is that the idea?

A Yes.

Q I see.

Does anyone else sit at your desk for the

phones or are you the only one who does?

A There are duplicates on all of the desks throughout the office, so the girls can pick up the phones as well as myself if it is necessary.

Q What are the direct wires you have?

A Are you asking me to name all of the direct wires I have?

Q How many do you have?

A 15 or 20.

Q What did Mr. Furman say to you and what did you say to Mr. Furman?

A I called Mr. Furman and told him that I had read on the Dow Jones broad tape an article that had printed at 4:11 on the preceding day, Wednesday, March 15th.

The article was released by Warner, Lambert & Company out of Morris Plains, New Jersey. I told him about the article.

Q What did you say?

A I said that -- I asked him what he thought of the article, because I told him that frankly I was very, very upset about the article.

Q Prior to this conversation with Mr. Furman, did you have a conversation with Mr. Furman in which he indicated to you the fact that his buying interest increased

from approximately 50,000 to 75,000?

A Did you say prior to what I just told you about?

Q Yes.

A No.

Q This was your first conversation that day?

A The first thing I said to Mr. Furman was, "Did you see the article on the broad tape?"

Q Did you have any conversation with anyone on March 16th, 1972 relating to Bausch & Lomb prior to your Furman conversation?

A Yes.

Q Whom did you have a conversation with?

A I believe I had a conversation with Derek Hoitsma at Faulkner, Dawkins & Sullivan.

Q At what time was that?

A I'm not positive which call was first.

Q Well, what did Mr. Hoitsma say to you and what did you say to Mr. Hoitsma?

A Mr. Hoitsma was not too concerned about the article.

Q What did you say to him and what did he say to you?

A I said that I was very concerned about the article. He said, "Well, they haven't received approval

the FDA and the transaction isn't consummated and we've heard these rumors a dozen times in the past."

Q Did he say anything else?

A Well --

Q Did you discuss earnings?

A No.

Q Did you discuss sales of Bausch & Lomb?

A We are now talking about --

Q Just the --

A -- the first conversation?

Q That's exactly right.

A No.

Q Why did you call Mr. Hoitsma?

A Why?

Q Yes.

A Because an analyst from Faulkner, Dawkins was scheduled to visit Bausch & Lomb that day and because Faulkner, Dawkins & Sullivan had been following Bausch & Lomb and recommending it for a considerable period of time.

Q How did you know that an analyst was scheduled to visit Bausch & Lome from Faulkner, Dawkins & Sullivan?

A Because I knew -- because Faulkner, Dawkins & Sullivan told me a week earlier that Dave McCallum was going up to Bausch & Lomb, I guess on a Thursday, on Thursday.

Q And who told you at Faulkner, Dawkins & Sullivan?

A Derek Hoitsma.

Q Did you call him or did he call you in that conversation?

A I don't recall.

Q What else did he say in that conversation relating to an appointment by Mr. McCallum with the management at Bausch & Lomb?

A That many other analysts were -- Mr. Schuman had just returned from some holiday and many other analysts were scheduled to see Mr. Schuman that week.

Mr. McCallum was scheduled to see him on Thursday morning.

Q Did he indicate who else was scheduled to see Mr. Schuman?

A I'm not sure.

Q Well, do you recall if he did?

A I think he probably did.

Q Well, do you recall anyone he indicated?

A No, I don't.

Q Let's get back now to your first conversation with Mr. Furman on March 16th, 1972.

A Right.

Q Did you have any discussion at all with

Mr. Furman in that first conversation relating to the buy side of the transaction -- of the block that he had called you on a day before?

A No.

Q Did he indicate to you, in words or substance, in that conversation the fact that his purchaser had increased the amount of stock that he wanted -- that he wanted to purchase from 50 to 75,000 shares?

A No.

Q Are you absolutely sure of that?

A The very first conversation?

Q That's exactly right.

A I'm pretty sure.

Q Did you tell Mr. Furman in this first conversation that you were no longer interested?

A No.

Q Did you tell him that you were still interested?

A No.

Q How did you leave it, if at all?

A I left it that I was very upset about this article and I wanted to speak with some people.

Q Well, what did you say, if anything, with regard to taking up the cleanup position?

A Nothing.

Q How did you leave it? As it was --

A It wasn't discussed.

Q I see. It didn't come up at all?

A I only discussed the article.

Q Did he say to you, "well, are you still interested to take up on the cleanup"?

A In the very first conversation?

Q Yes.

A I doubt it.

Q Do you recall if he did?

A I don't recall.

Q Okay.

What was your next conversation after the Hoitsma conversation and the Furman conversation?

A I believe that Dick Rosen -- that Richard Rosenthal, a partner of Salomon Bros., called me and told me that they had a block of Bausch & Lomb for sale. He asked me if I was a buyer.

Q What did you say to him?

A To which I responded no, I was not a buyer.

Q When did he call you?

A Sometime between 9:30 and ten o'clock.

Q And that was the third call of the day, was it not, on Bausch & Lomb?

A That was the third call that I've indicated. There may have been intermittent -- there may have been

calls -- other calls.

Q Do you recall any other calls?

A Are you asking me to give you the exact sequence of calls?

Q Yes.

A I -- I can't give you the exact sequence of calls. I can give you other calls.

Q Well, can you recallany calls --

A Yes.

Q -- intermittent between your Furman conversation, your Hoitsma conversation and now the Rosenthal conversation?

A Yes.

Q Who?

A Leonard Wilson of Burnham & Company.

I called him and asked him about -- had he read the announcement by Warner Lambert.

Q So your next conversation after the Hoitsma and Furman conversation was with Mr. Wilson; is that correct?

A That is my best recollection with the proviso that I am not positive about the sequence of the calls.

All of these calls --

Q As best you can recall, was that your next conversation?

A Yes.

Q What did you say to Mr. Wilson and what did he say to you?

A I told Mr. Wilson about the article and expressed concern.

He agreed with me.

Q What did he say to you?

A He said that he agreed that I should be very concerned about Warner Lambert going into the soft lens business with Frigitronics.

Q Did Mr. Wilson say anything else?

A No.

Q Did Mr. Wilson tell you whether or not he had been to the company?

A I'm sorry, whether or not he --

Q Had been to the company.

A He had been to the company, but I don't know if he had been there recently.

Q On your phone call with him of March the 16th, 1972, did Mr. Wilson indicate to you, in words or substance, whether or not he had visited the company during the week of March the 13th?

A No.

Q Did you ask him if he had contacted the management of Bausch & Lomb during that week?

A No.

Q Did you ask him if he had spoken to Schuman from the time he got back from vacation?

A No.

Q Do you recall anything else of the conversation?

A Yes.

Q What?

A We discussed the -- why we thought this announcement was so significant.

Q What did you discuss?

A Well, my concern was that assuming the 1973 approval were obtained by Warner Lambert to market the soft lens, that Bausch & Lomb would have difficulty in showing earnings gains in 1973.

The reason for this being that assuming a million pairs of soft lenses could be sold in 1973, if Warner Lambert were marketing them against Bausch & Lomb, perhaps Bausch & Lomb would only get half the market rather than 100 per cent of the market that I had up to that point been assuming that they would get.

That is what concerned me. That's what concerned him, too.

Q Did he indicate that to you?

A Yes, he was very concerned.

Q How did he express his concern?

A He said -- well, he said that there will be -- assuming they get approval, there will be no way to ascertain whether Bausch & Lomb will have up earnings in 1973.

Q Did you have any other conversation with Mr. Wilson?

A No.

Q What was your next conversation?

A I can't tell you my next conversation.

Q Okay.

Do you recall who you spoke with next?

A I can't tell you my next conversation.

Q All right.

What conversation can you tell me about on that day?

A I --

Q Well, let me ask you this:

Did you get a call from Mr. Hoitsma subsequent to your first one?

A Subsequent to my first call?

Q Yes.

A I am not sure.

Q You don't recall if Mr. Hoitsma called you on March the 16th at about 11 o'clock?

A Yes.

Q Now, whom did you speak with between 10 and 11?

A I spoke with Mr. Furman.

Q Okay.

Did you call him or did he call you?

A We have direct lines. I'm not sure. I buzzed him or he buzzed me.

Q You just pick up the phone?

A Yes.

Q What did you say to Mr. Furman and what did he say to you?

A He asked me -- he told me that his buyer was going to buy 75,000 shares rather than 25 or 50 -- I'm not sure which -- and was I interested.

I indicated to him that I had been called by Salomon Bros. and that they had the block -- from the preceding day -- and that -- and that he said he was authorized to make a 134 bid for 75,000 shares. I said that I would sell him my 75,000 shares.

Q This was between 10 and 11?

A How about between a quarter of 10 and 11?

Q Between a quarter to 10 and 11?

A Yes.

Q Did you have a call from Mr. Hoitsma between

the time of your Furman call and the time that you indicated to Mr. Furman that you would be willing to sell your securities?

A No.

Q Absolutely sure of that?

A Positively.

Between the time I indicated to Mr. Furman that I would sell the Bausch & Lomb and what time are we talking about now?

Give me when --

Q Let me do it over again.

A All right.

Q Did you speak with Mr. Hoitsma of Faulkner, Dawkins & Sullivan at any time prior to the time that you indicated to Mr. Furman the fact that you wanted to sell your shares other than the one conversation you already indicated?

A No, no.

Q You didn't speak with him?

A No.

Q How do you know that?

A Because the time that elapsed between the time I said I'd sell 75,000 shares and the time that Mr. Furman called me back was perhaps one or two minutes.

Q I see. Well, how about prior to the time of

your second conversation with Mr. Furman?

A I may have spoken to Mr. Hoitsma again and he may have -- yes, I may have spoken to him again.

Q Do you recall speaking to Mr. Hoitsma in which he indicated to you, in words or substance, the fact that McCallum had just called, had been to the company, the fact that earnings would be 60 to 70 cents for the first quarter?

A Yes.

Q What time was that phone conversation?

A Between 11 and 11:30.

Q Was that after you had indicated to Mr. Furman you wanted to sell?

A Yes.

Q How about was that after the transaction actually took place?

A Yes.

Q I see.

I want you to concentrate now on your conversation with Mr. Furman in which you indicated to him that you would sell the securities held by the three entities to which you are associated with.

A All right.

Q Tell me as best you recall, what you said to him and what he said to you?

A I said that I would sell him the 75,000 shares at 134. He said something like that he would have to go back to his buyer and tell him that it was a different seller.

I said no, let's do it right away, what's the difference who ge's buying from.

And then he said he had to. So he went back to the fellow. He called me back within a minute or two.

He said that they'll pay 133 for 75,000 shares. I said fine, you bought them.

Q What was the reason for your sale?

A The Warner Lambert announcement.

Could I elaborate on that?

Q Sure.

A There had been rumors in the past about Frigitronics securing approval of the market of soft lenses. All of these rumors had emanated from Frigitronics.

The announcement on the Dow Jones broad tape at 4:11 p.m. was released out of Morris Plains, New Jersey, by Warner Lambert.

That was the first time an announcement had ever come out that had some authenticity to it.

The fact that it came out of Warner Lambert

Q Why did it scare you?

A Because American Optical, a division of Warner Lambert, has extremely intelligent management and would knock Bausch & Lomb right out of the box if they ever got approval to sell soft lenses.

Q What was your next conversation after the one with Mr. Furman in which you indicated that you would agree to 133 to sell your securities?

A We sold it.

The next conversation I called the trading room at Newberger, Berman.

Q What did you say to the trading room?

A I said to sell the rest of the Bausch & Lomb that we owned. That was immediately after I was notified by Sieden & De Ceuvas that the block had crossed on the floor, within two minutes or three minutes after.

I gave them the order, the block crossed and I gave them a balance to sell, I believe 26,000 shares. This was at 10:32, 10:33 or maybe 10:35.

Q How do you know the time exactly?

A Because we have time stamps from the brokers.

Q Time stamps as to what?

A When the orders were placed.

Q Who gave you time stamps?